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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1942

Associations—Community Facilities Loans

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS) hereby amends the regulations utilized to administer the Community Facilities loan program to remove administrative requirements and the requirement to complete Forms RD 1942–14, 1942–43, and 1942–45 from Federal regulations. Forms RD 1942–14, 1942–43, and 1942–45 are completed by Federal employees processing loan requests to summarize information concerning project feasibility. Removal of the forms from the regulation will allow us to consolidate the forms and print a specialized project summary for each project from information entered into the Rural Development automated system.

EFFECTIVE DATE: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Dan Spieldenner, Community Programs Senior Loan specialist, Rural Housing Service, U.S. Department of Agriculture, STOP 0787, 1400 Independence Avenue SW., Washington, DC 20250–0787, telephone: (202) 720–9700.

SUPPLEMENTARY INFORMATION:

Classification

This action is not subject to the provisions of Executive Order 12866 since it involves only internal Agency management. This action is not published for proposed rulemaking because it involves only internal Agency management and publication for notice and comment is not necessary.

Programs Affected

The Catalog of Federal Domestic Assistance Program impacted by this action is 10.766, Community Facilities Loans and Grants.

Intergovernmental Review

These loans are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in the manner delineated in 7 CFR, part 3015 subpart V.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) except as expressively provided in the regulation, no retroactive effect will be given to this rule; and (3) administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule.

Environmental Impact Statement

The action has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. chapters 17A and 25, established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

Implementation

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall comply with 5 U.S.C. 553, notwithstanding the exemption of that section with respect to such rules. This action is not published for proposed rulemaking because it involves only internal Agency management and publication for notice and comment is unnecessary.

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and were assigned OMB control number 0575–0015 in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1955, no person is required to respond to a collection of information unless it displays a valid OMB control number. This final rule does not impose any new information or recordkeeping requirements.

Discussion

The Agency has determined that internal administrative forms completed by Agency employees are not subject to Federal regulatory requirements when information is obtained from other OMB-approved forms. Removal of administrative processing requirements and administrative forms will improve our ability to modernize our documentation process used to determine project feasibility and eligibility for program funding. We are developing a customized project summary for each project with our automated system to replace Forms RD 1942–14, 1942–43, and 1942–45.

List of Subjects in 7 CFR Part 1942

Community Development, Community Facilities, Loan programs—Housing and Community Development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—Community Facilities Loans

2. Section 1942.5 is amended by revising paragraphs (a)(1), introductory, (a)(2), (a)(3), (b)(1)(ii)(C), the introductory text of (c) and paragraph (c)(3) to read as follows:

§ 1942.5 Application review and approval.

(a) * * *

(1) The Rural Development manager will complete the project summary, including written analysis and recommendations, and will prepare a draft letter of conditions listing all the requirements that the applicant must agree to meet within a specific time.

* * * * *

(2) The State staff engineer or architect, as appropriate, will include a written analysis and recommendations on the project summary.

(1) The Chief, Community Programs or Community and Business Programs, will review the assembled application and include in the project summary a written analysis and recommendations, including the availability of other credit and other eligibility determinations. The draft letter of conditions will be reviewed and any necessary modifications made.

(b) * * *

(1) * * *

(ii)* * *

(C) Community Facilities Project Summary.

(c) *For all applications.* All letters of conditions will be addressed to the applicant, signed by the Rural Development Manager or other Agency representative designated by the State Director, and delivered to the applicant. Upon signing the letter of conditions, the Rural Development Manager will send two copies of the letter of conditions and two copies of the project summary to the State Director. The State Director will immediately send one copy of the project summary and a copy of the letter of conditions to the National Office, Attention: Community Programs. The Rural Development Manager, with assistance as needed from the State Office, will discuss the requirements of the letter of conditions with the applicant's representatives and afford them an opportunity to execute Form RD 1942–46.

* * * * *

(3) If the applicant accepts the letter of conditions, the Rural Development Manager will forward the executed Form RD 1942–46 and a signed and an unsigned copy of Form RD 1940–1 to the State Director.

* * * * *

3. Section 1942.17(f) is amended by revising paragraph (f)(1) to read as follows:

§ 1942.17 Community facilities.

* * * * *

(f) * * *—(1) *General.* Each loan will bear interest at the rate prescribed in RD Instruction 440.1, exhibit B (available in any Rural Development office). The interest rates will be set by Rural Development at least for each quarter of the fiscal year. All rates will be adjusted to the nearest one-eighth of 1 percent. The applicant may submit a written request prior to loan closing that the interest rate charged on the loan be the lower of the rate in effect at the time of loan approval or the rate in effect at the time of loan closing. If the interest rate is to be that in effect at loan closing, the interest rate charged on a loan involving multiple advances of Rural Development funds, using temporary debt instruments, shall be that in effect on the date when the first temporary debt instrument is issued. If no written request is received from the applicant prior to loan closing, the interest rate charged on the loan will be the rate in effect at the time of loan approval.

* * * * *

Subpart C—Fire and Rescue Loans

§ 1942.108 [Amended]

4. Section 1942.108(b) is removed and reserved.

Dated: September 20, 2002.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 02–24621 Filed 9–26–02; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 72

[Docket No. 01–110–2]

Texas (Splenetic) Fever in Cattle; Incorporation by Reference

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Texas (splenetic) fever in cattle regulations by updating the incorporation by reference of the Texas Animal Health Commission regulations that contain the description of the areas in Texas quarantined because of ticks. The interim rule was necessary to update the incorporation by reference to reflect the effective date of the current Texas Animal Health Commission regulations that describe the quarantined area.

EFFECTIVE DATE: The interim rule became effective on April 16, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Glen Garris, Senior Staff Officer, Invasive Species Team, Animal Health Programs Staff, VS, APHIS, 4700 River Road Unit 33, Riverdale, MD 20737–1231; (301) 734–8093.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on April 16, 2002 (67 FR 18466–18467, Docket No. 01–110–1), we amended the Texas (splenetic) fever in cattle regulations in 9 CFR part 72 by updating the incorporation by reference of the Texas Animal Health Commission regulations that contain the description of the areas in Texas quarantined because of ticks. The interim rule was necessary to update the incorporation by reference to reflect the effective date of the current Texas Animal Health

Commission regulations that describe the quarantined area.

Comments on the interim rule were required to be received on or before June 17, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 9 CFR Part 72

Animal diseases, Cattle, Incorporation by reference, Quarantine, Transportation.

PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 72 and that was published at 67 FR 18466–18467 on April 16, 2002.

Authority: 7 U.S.C. 8303, 8304, 8305, 8306, 8308, 8313, and 8315; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 23rd day of September, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–24601 Filed 9–26–02; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration (SBA).

ACTION: Final rule, and request for comments.

SUMMARY: The SBA originally announced its final decision to grant the Nonmanufacturer Rule for bearings, plain, unmounted and bearings mounted which was published in the **Federal Register** on May 30, 2002 (67 FR 37665). SBA became aware of the possible existence of a small business manufacturer for bearings, plain, unmounted, under North American Industry Classification 333613, Product Service Code (PSC) 3120. The purpose of this notice is to notify the public of this small business manufacturer of bearings, plain, unmounted under PSC 3120 and to retain a waiver of the Nonmanufacturer Rule for bearings, mounted under PSC 3130 and solicit comments from interested parties.

DATES: Comments and sources must be submitted on or before October 11, 2002.

ADDRESSES: Edith G. Butler, Program Analyst, Small Business Administration, 409 3rd Street, SW., Washington DC, 20416.

FOR FURTHER INFORMATION CONTACT: Edith G. Butler, Tel: (202) 619–0422

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on two coding systems. The first is the Office of Management and Budget North American Industry Classification System. The second is the Product and Service Code established by the Federal Procurement Data System.

Barry S. Meltz,

Deputy Associate Administrator for Government Contracting.

[FR Doc. 02–24558 Filed 9–26–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE190; Special Conditions No. 23–130–SC]

Special Conditions: CenTex Aerospace, Inc.; Beech Model A36 airplane, Installation of Full Authority Digital Engine Control (FADEC) System and the Protection of the System from the Effects of High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to CenTex Aerospace, Inc.; 7805 Karl May Drive; Waco, Texas 76708 for the Beech Model A36 airplane. This airplane will have a novel or unusual design feature(s) associated with the installation of an engine that uses an electronic engine control system in place of the engine's mechanical system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 18, 2002. Comments must be received on or before October 28, 2002.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE190, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE190. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; 816–329–4127 fax 816–329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In

addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE190.'' The postcard will be date stamped and returned to the commenter.

Background

On February 11, 2002, CenTex Aerospace, Inc. applied for a supplemental type certificate for their Beech Model A36 airplane. The Beech Model A36 is powered by a Teledyne Continental Motors model IOF–550-B engine. This engine incorporates Full Authority Digital Electronic Controls.

Type Certification Basis

Under the provisions of 14 CFR § 21.101, CenTex Aerospace, Inc. must show that the Beech Model A36 meets the applicable provisions of 14 CFR part 23, as amended by Amendments 23–1 through 23–53 thereto.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 23) do not contain adequate or appropriate safety standards for the Beech Model A36 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Beech Model A36 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The Beech Model A36 will incorporate the following novel or unusual design features:

The CenTex Aerospace, Inc. Beech Model A36 airplane will use an engine that includes an electronic control system with full engine authority capability.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic equipment. Since the electronic engine control system used on the CenTex Aerospace, Inc. Beech Model A36 will perform critical functions, provisions for protection from the effects of HIRF fields should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this Notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the ARAC Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, JAA, and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a full authority digital engine control is an example of a system that should address the HIRF environments.

Even though the control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (*e.g.*, radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (*e.g.*, automated cockpit powerplant controls such as mixture setting). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for the CenTex Aerospace, Inc., Beech Model A36 to provide HIRF protection and to evaluate the installation of the electronic engine control system for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23–46.

Applicability

As discussed above, these special conditions are applicable to the Beech Model A36. Should CenTex Aerospace, Inc. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one Beech model A36 airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance

contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the CenTex Aerospace, Inc., Beech Model A36 airplane.

1. *High Intensity Radiated Fields (HIRF) Protection.* In showing compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system, which performs critical functions, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the external HIRF threat environment defined in the following table:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation. Data used for engine certification may be used, when appropriate, for airplane certification.

2. Electronic Engine Control System. The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23–46. The intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement.

Issued in Kansas City, Missouri on September 18, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–24667 Filed 9–26–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE184, Special Condition 23–118–SC]

Special Conditions; Avidyne Corporation, Cirrus Design Corporation Model SR20/SR22; Protection of Systems for High Intensity Radiated Fields (HIRF); Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; correction.

SUMMARY: The FAA published a document in the **Federal Register** on May 24, 2002 (67 FR 36502), concerning final special conditions on the Avidyne Corporation on the Cirrus Design Corporation Model SR20/SR22. There was an inadvertent error in the preamble of the special conditions in the name of the corporation. This document contains a correction to the name of the company under the Novel or Unusual Design Features section of the final special conditions.

DATES: The effective date of these corrected special conditions is May 7, 2002.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION:

Need for Correction

The FAA published a document on May 24, 2002 (67 FR 36502) that issued final special conditions. In the document under the Novel or Unusual Design Features section, a company by the name of ''Carpenter Avionics Inc.'' appears, and it should have read ''Avidyne Corporation.'' This document corrects that error.

Correction of Publication

Accordingly, on page 36503, in column 3, the preamble of the special conditions is corrected to remove the name ''Carpenter Avionics Inc.'' and to replace it with the name ''Avidyne Corporation'' in the Novel or Unusual Design Features section.

Issued in Kansas City, Missouri on September 17, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–24666 Filed 9–26–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM229, Special Conditions No. 25–214–SC]

Special Conditions: Cessna Model 680 Sovereign; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Cessna Model 680 Sovereign airplane. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 18, 2002. Comments must be received on or before October 28, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM229, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM229. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment hereon is unnecessary as the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m., and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments received.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On November 29, 1999, Cessna Aircraft Company, One Cessna Boulevard, Wichita, KS 67277, submitted an application for a new type certificate for the Cessna Model 680 Sovereign airplane. The proposed new model is a twin engine, medium size business jet. The significant airplane design features include an aluminum fuselage and wing. The significant systems features include a brand new, state-of-the-art integrated avionics/electronics and electrical systems suite. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.17, the Cessna Aircraft Company must show that the Model 680 Sovereign airplane meets the provisions of 14 CFR part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–98; 14 CFR part 34, effective September 10, 1990, as amended by any amendment in effect on the date of certification; 14 CFR part 36, effective December 1, 1969, as amended by Amendments 36–1 through any amendment in effect on the date of certification. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna Model 680 Sovereign airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Cessna 680 Sovereign airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1), Amendment 21–60, effective September 16, 1991.

Novel or Unusual Design Features

The Cessna Model 680 Sovereign airplane will incorporate brand new avionics/electronics and electrical systems that will perform critical functions. These systems may be

vulnerable to HIRF external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Cessna Model 680 Sovereign airplane. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the following table for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Cessna Model 680 Sovereign airplane. Should Cessna Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of 14 CFR § 21.101(a)(1), Amendment 21–60, effective September 16, 1991.

Conclusion

This action affects only certain design features on the Cessna Model 680 Sovereign airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Cessna Model 680 Sovereign airplane.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on September 18, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–24668 Filed 9–26–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2590

RIN 1210–AA62

Interim Final Amendment for Mental Health Parity

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Interim final amendment to regulation.

SUMMARY: This document contains an interim final amendment to modify the sunset date of interim final regulations under the Mental Health Parity Act

(MHPA) to be consistent with legislation passed during the 107th Congress.

DATES: *Effective date*. The interim final amendment is effective September 30, 2001.

Applicability dates. The requirements of the interim final amendment apply to group health plans and health insurance issuers offering health insurance coverage in connection with a group health plan beginning September 30, 2001.

The MHPA interim final amendment extends the original sunset date from September 30, 2001 to December 31, 2002. Pursuant to the extended sunset date, MHPA requirements do not apply to benefits for services furnished on or after December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Connor, Pension and Welfare Benefits Administration, Department of Labor, at (202) 693–8335. *Customer Service Information*: Individuals interested in obtaining additional information on the Mental Health Parity Act and other health care laws may request copies of Department of Labor publications concerning changes in health care law by calling the PWBA Toll-Free Hotline at 1–866–275–7922. Information on the Mental Health Parity Act and other health care laws is also available on the Department of Labor's Web site (*http://www.dol.gov/pwba*).

SUPPLEMENTARY INFORMATION:

A. Background

The Mental Health Parity Act of 1996 (MHPA) was enacted on September 26, 1996 (Pub. L. 104–204, 110 Stat. 2944). MHPA amended the Employee Retirement Income Security Act of 1974 (ERISA) and the Public Health Service Act (PHS Act) to provide for parity in the application of annual and lifetime dollar limits on mental health benefits with dollar limits on medical/surgical benefits. Provisions implementing MHPA were later added to the Internal Revenue Code of 1986 (Code) under the Taxpayer Relief Act of 1997 (Pub. L. 105–34, 111 Stat. 1080).

The provisions of MHPA are set forth in Part 7 of Subtitle B of Title I of ERISA, Chapter 100 of Subtitle K of the Code, and Title XXVII of the PHS Act.[1] The Secretaries of Labor, the Treasury, and Health and Human Services share jurisdiction over the MHPA provisions. These provisions are substantially similar, except as follows:

- The MHPA provisions in ERISA generally apply to all group health plans other than governmental plans, church plans, and certain other plans. These provisions also apply to health insurance issuers that offer health insurance coverage in connection with such group health plans. Generally, the Secretary of Labor enforces the MHPA provisions in ERISA, except that no enforcement action may be taken by the Secretary against issuers. However, individuals may generally pursue actions against issuers under ERISA and, in some circumstances, under State law.
- The MHPA provisions in the Code generally apply to all group health plans other than governmental plans, but they do not apply to health insurance issuers. A taxpayer that fails to comply with these provisions may be subject to an excise tax under section 4980D of the Code.
- The MHPA provisions in the PHS Act generally apply to health insurance issuers that offer health insurance coverage in connection with group health plans and to certain State and local governmental plans. States, in the first instance, enforce the PHS Act with respect to issuers. Only if a State does not substantially enforce any provisions under its insurance laws will the Department of Health and Human Services enforce the provisions, through the imposition of civil money penalties. Moreover, no enforcement action may be taken by the Secretary of Health and Human Services against any group health plan except certain State and local governmental plans.

B. Overview of MHPA

The MHPA provisions are set forth in section 712 of ERISA, section 9812 of the Code, and section 2705 of the PHS Act. MHPA applies to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits. MHPA's original text included a sunset provision specifying that MHPA's provisions would not apply to benefits for services furnished on or after September 30, 2001. On December 22, 1997 the Departments of Labor, the Treasury, and Health and Human Services issued interim final regulations under MHPA in the **Federal Register** (62 FR 66931). The interim final regulations included this statutory sunset date.

On January 10, 2002, President Bush signed H.R. 3061 (Pub. L. 107–116, 115 Stat. 2177), the 2002 Appropriations Act for the Departments of Labor, Health and Human Services, and Education.[2] This legislation extends MHPA's original sunset date under ERISA, the Code, and the PHS Act, so that MHPA's provisions will not apply to benefits for services furnished on or after December 31, 2002. Like MHPA, the amendment to MHPA applies to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits.[3] As a result of the statutory amendment, and to assist employers, plan sponsors, health insurance issuers, and workers, the Department of Labor has developed this amendment of the interim final regulations, in consultation with the Departments of the Treasury and Health and Human Services, conforming the regulatory sunset date to the new statutory sunset date.

On March 9, 2002, President Bush signed H.R. 3090, the Job Creation and Worker Assistance Act of 2002 (Pub. L. 107–147, 116 Stat. 21), that included an amendment to section 9812 of the Code (the mental health parity provisions). This legislation further extends MHPA's original sunset date under the Code to December 31, 2003. The Joint Committee on Taxation's technical explanation of H.R. 3090 (JCT Report) states that the January 10th amendment to MHPA restored the excise tax retroactively to September 30, 2001. Under H.R. 3090, the excise tax provision of MHPA is amended to apply to benefits for such services furnished on or after January 10, 2002 and before January 1, 2004. MHPA's parallel provisions contained in ERISA and the PHS Act were not amended regarding either the period between September 30, 2001 and January 10, 2002 or the extension of the sunset date beyond December 31, 2002. As indicated by the JCT Report, H.R. 3061 restored the

[1] Part 7 of Subtitle B of Title I of ERISA, Chapter 100 of Subtitle K of the Code, and Title XXVII of the PHS Act were added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191.

[2] During the 107th Congress, legislation was passed by the Senate to substantively amend and expand the provisions of MHPA already in place. This legislation was offered as an amendment to the provisions of H.R. 3061. The Conference Report accompanying the underlying provisions of H.R. 3061 states that instead of the amendment proposed by the Senate, the amendment to MHPA contained in H.R. 3061 extends the original sunset date of MHPA, so that MHPA's provisions will not apply to benefits for services furnished on or after December 31, 2002. H.R. Rep. 107–342, at 170 (2001).

[3] The parity requirements under MHPA, the interim regulations, and the amendment to the interim regulations do not apply to any group health plan (or health insurance coverage offered in connection with a group health plan) for any plan year of a small employer. The term ''small employer'' is defined as an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

MHPA provisions retroactively to September 30, 2001. Therefore, the Department is making the effective date of this interim final amendment to the regulations effective September 30, 2001. The Department is also making conforming changes extending the duration of the increased cost exemption to be consistent with the new sunset date. Since the statute is retroactive, making the regulation retroactive limits confusion and disruption to employers, plan sponsors, and workers.

Since the extension of this sunset date is not discretionary, this amendment to the MHPA regulations is promulgated on an interim final basis pursuant to Section 734 of ERISA. This interim final amendment is also promulgated pursuant to Section 553(d)(3) of the Administrative Procedure Act, allowing for regulations to become effective immediately for good cause.

C. Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action is not a ''significant regulatory action'' within the meaning of the Executive Order. This action is an amendment to the 1997 interim final regulations and merely extends the regulatory sunset date to conform to the new statutory sunset date added by H.R. 3061.

D. Paperwork Reduction Act

The information collection provisions of MHPA incorporated in the Department's interim final rules are currently approved under OMB control numbers 1210–0105 (Notice to Participants and Beneficiaries and Federal Government of Electing One Percent Increased Cost Exemption), and 1210–0106 (Calculation and Disclosure of Documentation of Eligibility for Exemption). These information collection requests are approved through November 30, 2004 and October 31, 2004, respectively. Because no substantive or material change is made to the approved information collection provisions in connection with this interim final amendment, no submission for continuing OMB approval is required or made at this time.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Because this amendment to the 1997 interim final regulations is being published on an interim final basis, without prior notice and a period for comment, the Regulatory Flexibility Act does not apply.

F. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), as well as Executive Order 12875, this interim final amendment does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and does not include mandates that may impose an annual expenditure of $100 million or more on the private sector.

G. Congressional Review Act

This interim final amendment is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) (SBREFA), and has been transmitted to Congress and the Comptroller General for review. This amendment to the 1997 interim final regulations is not a major rule, as that term is defined by 5 U.S.C. 804.

H. Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This interim final amendment does not have federalism implications as it only conforms the regulatory sunset date to the new statutory sunset date added by H.R. 3061.

List of Subjects in 29 CFR part 2590

Employee benefit plans, Employee Retirement Income Security Act, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

Pension and Welfare Benefits Administration

29 CFR part 2590 is amended as follows:

PART 2590—RULES AND REGULATIONS FOR HEALTH INSURANCE PORTABILITY AND RENEWABILITY FOR GROUP HEALTH PLANS

1. The authority citation for Part 2590 is revised to read as follows:

Authority: Secs. 107, 209, 505, 609, 701–703, 711–713, and 731–734 of ERISA (29 U.S.C. 1027, 1059, 1135, 1169, 1181–1183, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c), as amended by HIPAA (Pub. L. 104–191, 110 Stat. 1936), MHPA (Pub. L. 104–204, 110 Stat. 2944, as amended by Pub. L. 107–116, 115 Stat. 2177), NMHPA (Pub. L. 104–204, 110 Stat. 2935), and WHCRA (Pub. L. 105–277, 112 Stat. 2681–436), section 101(g) of HIPAA, and Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987; section 401(b) of CPSIA (Pub. L. 105–200, 112 Stat. 645).

2590.712 [Amended] (g)(2), and (i)

2. Amend § 2590.712 (f)(1), (g)(2), and (i) to remove the date ''September 30, 2001'' and add in its place the date ''December 31, 2002''.

Signed at Washington, DC this 17th day of September, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor

[FR Doc. 02–24590 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–29–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Parts 2700, 2701, 2702, 2704, 2705, 2706

Commission Address Change

AGENCY: Federal Mine Safety and Health Review Commission (FMSHRC)

ACTION: Final rule.

SUMMARY: The Federal Mine Safety and Health Review Commission is amending its regulations to reflect changes to the addresses of its Headquarters office, and one of its Offices of Administrative Law Judges. FMSHRC is relocating its Headquarters office and one of its Offices of Administrative Law Judges, and these amendments to the regulations are necessary to inform the public of FMSHRC's new address.

DATES: This final rule will take effect on September 30, 2002.

ADDRESSES: This final rule is available on FMSHRC's Internet site, *http://www.fmshrc.gov* at the ''What's New/Recent Developments'' icons.

FOR FURTHER INFORMATION CONTACT: Sarah Stewart, Deputy General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor, Washington, DC 20006, 202–653–5610, before September 30, 2002, and 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, (202) 434–9935, thereafter.

SUPPLEMENTARY INFORMATION:

A. Background

On September 30, 2002, FMSHRC will move its Headquarters office from 1730 K Street, NW, 6th Floor, Washington, DC 20006 to 601 New Jersey Avenue, NW, Suite 9500, Washington, DC 20001. On that same date, FMSHRC will move its Office of Administrative Law Judges from Skyline Towers No. 2, Tenth Floor, 5203 Leesburg Pike, Falls Church, Virginia 22041 to 601 New Jersey Avenue, NW, Suite 9500, Washington, DC 20001. The Office of Administrative Law Judges presently located at 1244 Speer Boulevard, Suite 280, Denver, Colorado 80204, will remain at that location.

Because this amendment deals with agency management and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(a)(2) and (b)(3)(A).

Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing with only a change in address.

B. Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1955 (44 U.S.C. 3501 *et seq.*).

C. Executive Order 12866 Regulatory Planning and Review

This final rule is not a ''regulatory action'' under section 3 of Executive Order 12866, and has not been reviewed by the Office of Management and Budget. The rule is an administrative action that changes the address of a Federal agency. Because the rule is limited to agency organization, management and personnel, it falls within the exclusion set forth in section 3(d)(3) of the Executive Order.

In promulgating this rule, FMSHRC has adhered to the regulatory philosophy and applicable principles of regulation set forth in section 1 of the Executive Order.

D. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local or tribal governments, or by the private sector.

List of Subjects

29 CFR Part 2700

Administrative practice and procedure, Mine safety and health, Penalties, Whistleblowing.

29 CFR Part 2701

Sunshine Act.

29 CFR Part 2702

Freedom of information.

29 CFR Part 2704

Claims, Equal access to justice.

29 CFR Part 2705

Privacy.

29 CFR Part 2706

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

Accordingly, Chapter XXVII of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2700—PROCEDURAL RULES

1. The authority citation for Part 2700 continues to read as follows:

Authority: 30 U.S.C. 815, 820 and 823.

§ 2700.4 [Amended]

2. In § 2700.4(b)(1), the address for the Executive Director, Federal Mine Safety and Health Review Commission, is revised from ''1730 K Street, NW., Sixth Floor, Washington, DC 20006–3867'' to read ''601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001''.

§ 2700.5 [Amended]

3. In § 2700.5(b), the address for the Docket Office, Federal Mine Safety and Health Review Commission, is revised from ''1730 K Street, NW., Sixth Floor, Washington, DC 20006–3867'' to read ''601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; facsimile delivery as allowed by these rules (see § 2700.5(d)), shall be transmitted to (202) 434–9954''.

4. In § 2700.5(g), the address for the Office of General Counsel or the Docket Office of the Federal Mine Safety and Health Review Commission is revised from ''1730 K St., NW., Sixth Floor, Washington, DC 20006–3867'' to read ''601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001''.

§ 2700.82 [Amended]

5. In § 2700.82(d), the address for the Office of General Counsel or the Docket Office of the Federal Mine Safety and Health Review Commission is revised from ''1730 K Street, NW., Sixth Floor, Washington, DC 20006–3867'' to read ''601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001''.

PART 2701—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS

6. The authority citation for part 2701 continues to read as follows:

Authority: Sec. 113, Federal Mine Safety and Health Act of 1977, Pub. L. 95–165 (30 U.S.C. 823).

§ 2701.4 [Amended]

7. In § 2701.4, the address for the Office of the Executive Director, Federal Mine Safety and Health Review Commission, is revised from ''1730 K Street, NW., Washington, DC 20006'' to read ''601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001''.

PART 2702—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

8. The authority citation for part 2702 continues to read as follows:

Authority: Sec. 113, Federal Mine Safety and Health Act of 1977, Pub. L. 95–165 (30 U.S.C. 801 *et seq.*); 5 U.S.C. 552; Pub. L. 104–231, October 2, 1996, 110 Stat. 3048.

9. Section 2702.2 is revised to read as follows:

§ 2702.2 Location of offices.

The Commission maintains its Headquarters office at 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001. It has two offices for Administrative Law Judges, one at 601 New Jersey Avenue, NW., Suite 9500,

Washington, DC 20001, and the other at 1244 Speer Boulevard, Suite 280, Denver, Colorado 80204–3582.

§ 2702.3 [Amended]

10. In § 2702.3(a), the address for the Executive Director, Federal Mine Safety and Health Review Commission, is revised from ''6th Floor, 1730 K Street NW., Washington, DC 20006–3867'' to read ''601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001''.

PART 2704—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN COMMISSION PROCEEDINGS

11. The authority citation for part 2704 continues to read as follows:

Authority: (5 U.S.C. 504(c)(1); Pub. L. 99–80, 99 Stat. 183; Pub. L. 104–121, 110 Stat. 862.

§ 2704.201 [Amended]

12. In § 2704.201(a), the address for the Chief Administrative Law Judge of the Commission is revised from ''1730 K Street NW, 6th Floor, Washington, DC 20006'' to read ''601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001''.

§ 2704.308 [Amended]

13. In § 2704.308(b), the address for the Commission is revised from ''1730 K Street NW., Washington, DC 20006'' to read ''601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001''.

PART 2705—PRIVACY ACT IMPLEMENTATION

14. The authority citation for part 2705 continues to read as follows:

Authority: 5 U.S.C. 552a; Pub. L. 93–579.

§ 2705.4 [Amended]

15. In § 2705.4, the address for the Executive Director of the Commission is revised from ''1730 K Street NW., Room 612, Washington, DC 20006'' to read ''601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001''.

§ 2705.8 [Amended]

16. In § 2705.8, the address for the Chairman, Federal Mine Safety and Health Review Commission, is revised from ''1730 K Street NW., Room 610, Washington, DC 20006'' to read ''601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001''.

PART 2706—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

17. The authority citation for part 2706 continues to read as follows:

Authority: 29 U.S.C. 794.

§ 2706.170 [Amended]

18. In § 2706.170(c), the address for the General Counsel, Federal Mine Safety and Health Review Commission, is revised from ''1730 K Street NW., Suite 600, Washington, DC 20001'' to read ''601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001''.

Dated: September 20, 2002.

Richard L. Baker,

Executive Director, Federal Mine Safety and Health Review Commission.

[FR Doc. 02–24546 Filed 9–26–02; 8:45 am]

BILLING CODE 6735–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–075]

RIN 2115–AE46

Special Local Regulations for Marine Events; Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the ''Head of the Cape Fear Regatta'', a marine event to be held over the waters of the Cape Fear River, Wilmington, North Carolina. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Cape Fear River during the event.

DATE: This rule is effective from 7:30 a.m. to 5:30 p.m. on October 5, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–075 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The event will be held on Saturday, October 5, 2002. There is not sufficient time to allow for a notice and comment period, prior to the event. Because of the danger posed by other vessels operating near rowing shells competing within a confined area, special local regulations are necessary to provide for the safety of event participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On October 5, 2002, Riverfest Celebrations, Inc. will sponsor the ''Head of the Cape Fear Regatta'' on the waters of the Cape Fear River, Wilmington, North Carolina. The event will consist of rowing shells racing in heats of 30 against the clock along a 3-mile section of the Cape Fear River. To provide for the safety of spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the event.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Cape Fear River. The regulated area includes all waters of the Cape Fear River from the Cape Fear Memorial Bridge upriver to the Seaboard Coast Line Railroad Bridge at Navassa Turning Basin. The temporary special local regulations will be in effect from 7:30 a.m. to 5:30 p.m. on October 5, 2002. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will allow non-participating vessels to transit the regulated area at slow speed between heats when safe to do so. These

regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Although this rule prevents traffic from transiting a portion of the Cape Fear River during the event, the effect of this rule will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Cape Fear River during the event.

Although this rule prevents traffic from transiting a portion of the Cape Fear River during the event, the effect of this rule will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(h) and (35)(a) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under those sections. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 7:30 a.m. to 5:30 p.m. on October 5, 2002, add a temporary § 100.35–T05–075 to read as follows:

§ 100.35–T05–075 Cape Fear River, Wilmington, North Carolina.

(a) *Definitions.*

(1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Fort Macon.

(2) *Official Patrol.* The Official Patrol is any commissioned, warrant, or petty officer of the Coast Guard on board a vessel displaying a Coast Guard ensign.

(b) *Regulated area.* All waters of the Cape Fear River from shoreline to shoreline, bounded to the north by the Seaboard Coast Line Railroad Bridge at Navassa Turning Basin and bounded to the south by the Cape Fear Memorial Bridge.

(c) *Special local regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(d) *Enforcement period.* This section will be enforced from 7:30 a.m. to 5:30 p.m. on October 5, 2002.

Dated: September 19, 2002.

A.E. Brooks,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 02–24635 Filed 9–26–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD11–02–005]

Drawbridge Operation Regulations; Sacramento River, Walnut Grove, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District has issued a temporary deviation to the regulation governing the opening of the Walnut Grove Highway drawbridge, mile 26.7, over the Sacramento River at Walnut Grove, CA. This deviation allows the drawbridge to require 1 hour advance notice before opening, and allows the drawbridge to perform single leaf operation of the drawspan for vessel traffic. This deviation is necessary to allow Sacramento County to perform essential repairs to the bridge operating machinery.

DATES: This deviation is effective from 8 a.m. on Monday, October 28, until 5 p.m. on Friday, November 1, 2002.

ADDRESSES: Materials referred to in this rule are available for inspection or copying at the Eleventh Coast Guard District, Bridge Administration Section, Building 50–6 Coast Guard Island, Alameda, CA 94501–5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The phone number is (510) 437–3516. The Bridge Administration Section maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, phone (510) 437–3516.

SUPPLEMENTARY INFORMATION: The Walnut Grove Highway drawbridge, mile 26.7, over the Sacramento River at Walnut Grove, CA, is owned and operated by Sacramento County. It is a double leaf bascule drawbridge providing 21 feet vertical clearance above mean high water in the closed-to-navigation position. Vessels that can pass under the bridge without an opening may do so at all times. Presently, as set out in 33 CFR 117.189, the draw is required to open on signal from 9 a.m. to 5 p.m., November 1 through April 30; and 6 a.m. to 10 p.m., May 1 through October 31; and all other times if at least 4 hours advance notice is given. At the bridge location, the Sacramento River is navigated by commercial and recreational vessels requiring several daily openings of the drawspan.

During the repair period, 1 hour advance notice will be required before opening and the bridge will perform single leaf operation of the drawspan for vessel traffic from 8 a.m. to 5 p.m. daily, October 28 through November 1, 2002. Single leaf openings will be provided for emergency operation upon 15 minute advance notice. Sacramento County requested a temporary deviation from the normal operation of the drawbridge in order to allow for repairs. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the normal operating regulations in 33 CFR 117.5 is authorized in accordance with the provisions of 33 CFR 117.35.

Dated: September 13, 2002.

T.S. Sullivan,

U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 02–24663 Filed 9–26–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–105]

Drawbridge Operation Regulations: Harlem River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the 103 Street (Wards Island) Bridge, mile 0.0, across the Harlem River at New York. This temporary deviation will allow the bridge to remain closed to navigation from 8 a.m. on September 23, 2002 through 5 p.m. on November 20, 2002. This temporary deviation is necessary to facilitate painting operations at the bridge.

DATES: This deviation is effective from September 23, 2002 through November 20, 2002.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The bridge owner, New York City Department of

Transportation, requested a temporary deviation from the drawbridge operating regulations to facilitate necessary maintenance, to install paint containment, scaffold, and implement painting operations, at the bridge. The installation of the paint containment and scaffold, necessary to conduct painting operations, require the bridge to remain in the closed position.

Under this temporary deviation the 103 Street (Wards Island) Bridge may remain closed to vessel traffic from 8 a.m. on September 23, 2002 through 5 p.m. on November 20, 2002.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: September 12, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–24664 Filed 9–26–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Juan 02–038]

RIN 2115–AA97

Safety Zones; Ponce Bay, Tallaboa Bay, and Guayanilla Bay, Puerto Rico and Limetree Bay, St. Croix, U.S. Virgin Islands

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing moving safety zones around all Liquefied Hazardous Gas (LHG) vessels with product aboard in the waters of the Caribbean Sea and the Bays of Ponce, Tallaboa, Guayanilla, Puerto Rico and Limetree Bay, U.S. Virgin Islands. This action is necessary due to the highly volatile nature of this cargo. This rule is necessary to enhance public and maritime safety by requiring vessel traffic to maintain a safe distance from these LHG vessels while they are underway.

DATES: This rule is effective October 28, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket [COTP San Juan 02–038] and are available for inspection or copying at Coast Guard Marine Safety Office San Juan, Rodriguez and Del Valle Building, San Martin Street, Carr. #2, Km. 4.9, Guaynabo, Puerto Rico, 00968, between the hours of 7 a.m. and 3:30 p.m., Monday through Friday, excluding Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Chip Lopez, Coast Guard Marine Safety Office San Juan, Puerto Rico, at (787) 706–2444.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 4, 2002, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zones; Ponce Bay, Tallaboa Bay, Guayanilla Bay, Puerto Rico, and Limetree Bay, St. Croix U.S.V.I.'' in the **Federal Register** (67 FR 38451). We received no letters commenting on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

These rules are needed to provide for the safety of life on navigable waters from the hazards associated with Liquified Hazardous Gas (LHG) carriers. The safety zones are needed because of the significant risks LHG ships present to public safety due to their size, draft, and volatile cargoes. We anticipate periodic arrivals of vessels carrying LHG in Ponce, Tallaboa and Guayanilla Bays, Puerto Rico and Limetree Bay, St. Croix, U.S. Virgin Islands. This rule will keep vessel traffic at least 100 yards away from LHG vessels thereby decreasing the risk of a collision, allision, or grounding.

This rule establishes a 100-yard safety zone in the waters of the Caribbean Sea surrounding all LHG vessels with product aboard while transiting on approach to or departing from the following Ports, north of the latitudes indicated. Port of Ponce, Puerto Rico north of Latitude 17°56.00' N. Ports of Tallaboa and Guayanilla, Puerto Rico north of Latitude 17°57.00' N. Port of Limetree Bay, St. Croix, U.S. Virgin Islands north of 17°39.00' N. All coordinates are NAD 83. These safety zones remain in affect until the LHG vessel is safely moored. The Marine Safety Office San Juan will notify the maritime community of periods during which these safety zones will be in effect by providing advance notice of scheduled arrivals and departures on LHG carriers via a broadcast notice to mariners on VHF Marine Band Radio, Channel 16 (156.8 MHz).

Discussion of Comments and Changes

No comments were received on the proposed rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, l979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary due to the relatively infrequent arrival of LHG carriers, the limited size of the safety zone, and the relatively sparse nature of other commercial traffic in Ponce, Tallaboa, Guayanilla, and Limetree Bays.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''Small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit a portion of Ponce, Tallaboa, Guayanilla, and Limetree Bays while a LHG vessel transits and docks at a facility. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities because of the relative infrequent arrivals of LHG carriers, the limited size of the safety zone, and the relatively sparse nature of other commercial traffic in Ponce, Tallaboa, Guayanilla, and Limetree Bays.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant

Chip Lopez at (787) 706–2444 for assistance in understanding this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this rule and has determined that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the Preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.757 to read as follows:

§ 165.757 Safety Zones; Ports of Ponce, Tallaboa, and Guayanilla, Puerto Rico and Limetree Bay, St. Croix, U.S.V.I.

(a) *Location.* The following areas are established as a safety zones during the specified conditions:

(1) *Port of Ponce, Puerto Rico.* A 100-yard radius surrounding all Liquefied Hazardous Gas (LHG) vessels with product aboard while transiting north of Latitude 17°57.0′ N in the waters of the Caribbean Sea on approach to or departing from the Port of Ponce, Puerto Rico (NAD 83). The safety zone remains in effect until the LHG vessel is docked.

(2) *Port of Tallaboa, Puerto Rico.* A 100-yard radius surrounding all Liquefied Hazardous Gas (LHG) vessels with product aboard while transiting north of Latitude 17°56.0′ N in the waters of the Caribbean Sea on approach to or departing from the Port of Tallaboa, Puerto Rico (NAD 83). The safety zone remains in effect until the LHG vessel is docked.

(3) *Port of Guayanilla, Puerto Rico.* A 100-yard radius surrounding all Liquefied Hazardous Gas (LHG) vessels around with product aboard while transiting north of Latitude 17°57.0′ N in the waters of the Caribbean Sea on approach to or departing from the Port of Guayanilla, Puerto Rico (NAD 83). The safety zone remains in effect until the LHG vessel is docked.

(4) *Port of Limetree Bay, St. Croix, U.S.V.I.* A 100-yard radius surrounding all Liquefied Hazardous Gas (LHG) vessels with product aboard while transiting north of Latitude 17°39.0′ N in the waters of the Caribbean Sea on approach to or departing from the Port of Limetree Bay, U.S.V.I. (NAD 83). The safety zone remains in effect until the LHG vessel is docked.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in these zones is prohibited unless authorized by the Coast Guard Captain of the Port. The Marine Safety Office San Juan will notify the maritime community of periods during which these safety zones will be in effect by providing advance notice of scheduled arrivals and departures on LHG carriers via a broadcast notice to mariners on VHF Marine Band Radio, Channel 16 (156.8 MHz).

Dated: September 16, 2002.

W.J. Uberti,

Captain, U.S. Coast Guard, Captain of the Port, San Juan.

[FR Doc. 02–24665 Filed 9–26–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK95

Recoupment of Severance Pay From VA Compensation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulation governing recoupment of military severance pay from service-connected disability compensation to conform to the statutory provision that, effective September 15, 1981, requires the recoupment of any severance pay from VA compensation. VA is also amending these regulations to reflect the statutory provision that excludes Federal income tax withheld from payments of separation pay, severance pay, and readjustment pay made after September 30, 1996, from VA recoupment.

DATES: *Effective Date:* September 27, 2002.

Applicability Dates: The changes will be applied retroactively to conform to statutory requirements. For more information concerning dates of applicability, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810

Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7213.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 3.700(a)(3) currently state that there is no prohibition against payment of compensation if a veteran received nondisability severance pay from the military.

In a precedent opinion (VAOPGCPREC 12–96), VA's General Counsel held that the portion of 38 CFR 3.700(a)(3) which states that there is no prohibition against payment of compensation to a veteran who received nondisability severance pay is of no effect because it is inconsistent with 10 U.S.C. 1174(h)(2), which as added in 1980 by Public Law 96–513, section 109(c), 94 Stat. 2835, 2870 (1980), requires, effective September 15, 1981, recoupment of nondisability severance pay from VA compensation. Therefore, VA is amending 38 CFR 3.700(a)(3) to conform to the governing statute.

Public Law 104–201 amended 10 U.S.C. 1174(h)(2) to exclude Federal income tax withheld from payments of separation pay, severance pay and readjustment pay made after September 30, 1996, from VA recoupment. VA is amending 38 CFR 3.700(a)(2)(iii), (a)(3), and (a)(5)(i) to conform to this governing statute. In addition, VA is making nonsubstantive changes to 38 CFR 3.700 for purposes of clarity.

Except with respect to the amendment relating to income tax, this rule applies to disability compensation paid after September 14, 1981; the amendment relating to income tax applies only to payment of separation pay, special separation benefits under 10 U.S.C. 1174a, severance pay, and readjustment pay made after September 30, 1996.

While this document updates VA regulations concerning statutes enacted in 1981 and 1996, VA procedures have adhered to these statutes since their enactment. This document brings VA regulations into conformance with VA practice and will not create overpayments in any existing claims.

Administrative Procedure Act

Changes made by this final rule merely reflect the statutory requirements in title 10, U.S.C. or are nonsubstantive changes made for purposes of clarity. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This final rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: August 16, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.700 is amended by:

A. In paragraph (a)(2)(iii), removing ''of the total amount'; adding two sentences and revising the authority citation at the end of paragraph (a)(2)(iii).

B. In paragraph (a)(3), in the first sentence, removing ''severance pay is granted,'' and adding, in its place, ''severance pay is granted, or where entitlement to disability compensation was established on or after September 15, 1981,''; removing the fifth sentence; in the six sentence, removing ''Compensation'' and adding, in its place, ''Where entitlement to disability compensation was established prior to September 15, 1981, compensation''; adding three sentences at the end of paragraph (a)(3); and revising the authority citation at the end of the paragraph.

C. In paragraph (a)(5), revising the paragraph heading.

D. In paragraph (a)(5)(i), removing ''A veteran'' and adding, in its place, ''Where entitlement to disability compensation was established on or after September 15, 1981, a veteran'; removing ''total amount received as''; adding two sentences at the end of paragraph (a)(5)(i).

E. Revising the authority citation at the end of paragraph (a)(5).

The revisions and additions read as follows:

§ 3.700 General.

* * * * *

(a) * * *

(2) * * *

(iii)* * * Where payment of readjustment pay was made on or before September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of readjustment pay. Where payment of readjustment pay was made after September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of readjustment pay less the amount of Federal income tax withheld from such pay.

(Authority: 10 U.S.C 1174(h)(2) and 1212(c))

* * * * *

(3) * * * Where entitlement to disability compensation was established on or after September 15, 1981, a veteran may receive disability compensation for disability incurred or aggravated by service prior to the date of receipt of the severance pay, but VA must recoup from that disability compensation an amount equal to the severance pay. Where payment of severance pay was made on or before September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of the severance pay. Where payment of severance pay was made after September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of the severance pay less the amount of Federal income tax withheld from such pay.

(Authority: 10 U.S.C. 1174(h)(2) and 1212(c))

* * * * *

(5) *Separation pay and special separation benefits.* (i) * * * Where payment of separation pay or special separation benefits under section 1174a was made on or before September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of separation pay or special separation benefits. Where payment of separation pay or special separation benefits under section 1174a was made after September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of separation pay or special separation benefits less the amount of Federal income tax withheld from such pay.

* * * * *

(Authority: 10 U.S.C. 1174 and 1174a)

* * * * *

[FR Doc. 02–24390 Filed 9–26–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–200228(a); FRL–7382–2]

Approval and Promulgation; Georgia Transportation Conformity State Implementation Plan Memorandum of Agreement for the Atlanta Metropolitan Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating a minor correction to its previous approval of the transportation conformity State Implementation Plan (SIP) for Atlanta, Georgia promulgated on April 7, 2000 (65 FR 18249). This direct final rulemaking will amend EPA's approval of the Georgia Transportation Conformity SIP, so that the current SIP is consistent with the March 2, 1999, decision by the U.S. Court of Appeals for the District of Columbia Circuit Court that affected the transportation conformity regulations pertaining to triggers and the frequency of conformity determinations. As a consequence of this correction, Georgia will no longer be required to make a new conformity determination within eighteen months of the submission date of an initial SIP. Alternatively, EPA's August 6, 2002, rulemaking revision (67 FR 50808) will now govern the establishment of the eighteen-month conformity clock for initial SIP submissions. The eighteen-month clock for initial SIPs will begin upon the effective date of EPA's adequacy finding for the motor vehicle emissions budgets in such submitted SIPs.

DATES: This direct final rule is effective November 26, 2002, without further notice, unless EPA receives adverse comment by October 28, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Kelly A. Sheckler at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. References file GA 20228. The EPA Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Attn.: Kelly Sheckler, 404/562–9042, *Sheckler.Kelly@epa.gov.*

Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Division, 4244 International Parkway, Suite 136, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Quality Modeling and Transportation Section, US. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303, *Sheckler.Kelly@epa.gov,* (404) 562–9042.

SUPPLEMENTARY INFORMATION:

Background

Transportation conformity is required under section 176(c) of the Clean Air Act (42 U.S.C. 7506(c) to ensure that federally supported highway and transit project activities are consistent with (''conform to'') the purpose of a state air quality implementation plan. EPA's transportation conformity rule established the criteria and procedures for determining whether transportation activities conform to the state air quality plan.

EPA first published the transportation conformity rule on November 24, 1993 (58 FR 62188), and made subsequent revisions to the rule in 1995 (60 FR 40098, August 7, 1995, and 60 FR 57179, November 14, 1995). On August 15, 1997, however, EPA published a comprehensive set of amendments that clarified and streamlined language from the 1993 transportation conformity rule and 1995 amendments (62 FR 43780). Since the publication of the 1997 rule, EPA has made two additional revisions to the conformity rule in 2000 and 2002 (65 FR 18911, April 10, 2000, and 67 FR 50808, August 6, 2002).

The August 2002 amendment to the conformity rule addressed, in part, the decision made on March 2, 1999, by the U.S. Court of Appeals for the District of Columbia Court that affected several provisions of the 1997 rulemaking (*Environmental Defense Fund* v. *EPA, et al.*, 167 F. 3d 641, D.C. Cir 1999). Specifically, the August amendment addressed the impact of this Court decision on one provision of the conformity rule, Section 93.104 (e). With this rule change, conformity must now be determined within eighteen months of the effective date of the **Federal Register** notice announcing EPA's finding that the motor vehicle emission budgets in an initial SIP submission are adequate rather than within eighteen months of initial SIP submission.

We made this minor change to the conformity rule to respond to the Court decision that EPA must find motor vehicle emissions budgets in submitted SIPs adequate before they can be used in a conformity determination. The August 2002, rulemaking also changes the starting point for eighteen month clocks that are currently running for areas with initial SIP submissions, so that these areas are given the full eighteen months after EPA's adequacy finding to determine conformity to their SIPs. In other words, in areas where a SIP has been submitted and EPA is currently reviewing it for adequacy, the eighteen-month clock required by section 93.104(e) (2) will now not start until the effective date of our adequacy finding. For areas that have submitted initial SIPs that EPA has already found adequate and to which conformity has not yet been determined, the August rule restarts the eighteen-month clock from the effective date of EPA's positive adequacy finding. For more information on the eighteen-month conformity requirement for initial SIP submissions see the August 6, 2002 final rule (67 FR 50808).

Section 51.390 (b) of the conformity rule specifies that after EPA approves a conformity SIP revision, the federal rule no longer governs conformity determinations with respect to the provisions covered by the state rule. Therefore, areas that have approved SIPs governing eighteen-month triggers (*i.e.*, SIPs that include 93.104(e)(a) from the 1997 transportation conformity rule), the actions of the August 6, 2002 rule will normally only be effective when EPA approves a conformity SIP revision that includes the amendment to the state rules to align the eighteen-month clock for initial SIP submissions with EPA's adequacy provisions. In the case of Atlanta, EPA has approved conformity SIP that included section 93.104(e)(2) from the 1997 version of the transportation conformity rule. However, EPA believes that its initial approval of Atlanta's SIP was in error. Specifically, EPA should not have approved section 105(e) of the State Interagency Transportation Conformity Memorandum of Agreement (MOA) since this provision mirrors section 93.104(e)(2) that was indirectly affected by the March 2, 1999 court decisions.

Therefore, in today's action, EPA is correcting its earlier approval of the Atlanta, Georgia transportation conformity SIP to remove approval of section 105(e) of the Interagency Transportation Conformity MOA. EPA believes that its approval of that provision was in error, because it was made after the March 2, 1999, court ruling that conformity could not be shown to the motor vehicle emissions budgets in submitted SIPs until EPA finds such submitted budgets adequate for transportation conformity purposes. Since section 105(e) would require a determination of conformity within eighteen-months of submittal of an initial SIP, even if EPA had not found the budget to be adequate, EPA concludes that it should not have approved that section of the Atlanta SIP.

Final Action

Therefore, pursuant to section 110(k)(6) of the Clean Air Act, EPA is now correcting its approval of the Atlanta SIP to remove its approval of section 105(e). In the absence of EPA approval of this provision, the state of Georgia will revert back to reliance of the Federal transportation conformity rule and its requirement for the eighteen-month conformity requirement for initial SIPs. That is, the eighteen-month conformity requirement will now be triggered in Atlanta only from the effective data of EPA's adequacy finding for such initial SIPs.

The EPA is publishing this rule without a prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments are filed. This rule will be effective November 26, 2002, without further notice unless the Agency receives adverse comments by October 28, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 26, 2002, and no further action will be taken on the proposed rule.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Effect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely corrects our action that approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule corrects our action that approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely corrects our action that approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the

appropriate circuit by November 26, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and will not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 11, 2002.

A. Stanley Meiburg,

Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart L—Georgia

2. Section 52.570(e), is amended by revising entry 12 in the table-EPA Approved Georgia Non-Regulatory Provisions to read as follows:

§ 52.570 Identification of plan.

* * * * *

EPA APPROVED GEORGIA NON-REGULATORY PROVISION

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date
* * * *	*	*	*
12. Georgia Interagency Transportation Conformity Memorandum of Agreement, except for the following sections: Section 103(4)(d); Section 105(e); Section 106(c); Section 110(c)(1)(ii); Section 110(c)(2)(ii); Section 110(d)(2)(i); Section 110(d)(3)(i); Section 110(e)(2)(i); Section 110(e)(3)(i); Section 119(e)(1); Section 119b(a)(2); Section 130(1); and Section 133..	Atlanta Metropolitan Area.	February 16, 1999.	November 26, 2002.
* * * *	*	*	*

[FR Doc. 02–24490 Filed 9–26–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–63–2–7569; FRL–7384–6]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Louisiana; Emissions Reduction Credits Banking in Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving the Louisiana emission reduction credit (ERC) banking program as a revision to the Louisiana State Implementation Plan (SIP). The ERC banking regulation establishes a means of enabling stationary sources to identify and preserve or acquire emission reductions for New Source Review (NSR) emission offsets. The revisions remove the requirement that ERCs in the bank be set aside as a contingency measure for the attainment demonstration. The revisions also remove the requirement that NSR netting be conducted with surplus ERCs from the bank. The revisions clarify the requirement that ERCs be surplus to all requirements of the Clean Air Act (the Act) when used. The EPA approves these revisions to the ERC banking regulation to satisfy the provisions of the Act which relate to the permitting of new and modified sources which are located in nonattainment areas. The EPA does not approve the revisions as an Economic Incentive Program (EIP), nor through this rule alone are we allowing the use of ERCs for interprecursor trading purposes or for alternate Reasonably Available Control Technology (RACT) compliance purposes. Pursuant to section 553(d) of the Administrative Procedure Act, EPA finds good cause to make this action effective immediately.

EFFECTIVE DATE: This rule will be effective on September 27, 2002.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Louisiana Department of Environmental Quality, 7920 Bluebonnet Boulevard, Baton Rouge, Louisiana 70884.

FOR FURTHER INFORMATION CONTACT: Merrit H. Nicewander, Watershed Management Section (6WQ–EW), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7519 *(nicewander.merrit@epa.gov).*

SUPPLEMENTARY INFORMATION: This section is organized as follows:

Throughout this document ''we'' ''us'' and ''our'' means EPA.

I. What Action is EPA Taking?

We are granting approval of the Louisiana Department of Environmental Quality (LDEQ) ERC banking regulation as a component of the Louisiana SIP. The rule is promulgated by the State at LAC 33:III, Chapter 6 (Regulations on Control of Emissions Through the Use of Emission Reduction Credit Banking), as published in the Louisiana Register on February 20, 2002. The Governor of Louisiana submitted this rule to the EPA as a SIP revision on March 4, 2002.

Our approval of the revised ERC bank rule was necessary to reflect the rescission of the contingency measures' enforceable process contained in section 621 of the rule, to incorporate the ''Surplus When Used'' provision in accordance with the Act and our Administrator's Order of December 22,

2000, to remove the requirement that netting reductions for nonattainment new source review (NNSR) purposes meet the surplus requirement of the emissions bank and to remove section 611 regarding mobile sources emission reductions, which we had not previously approved as part of the SIP. In addition, the revised rule removed section 623, which covered the withdrawal, use and transfer of ERCs, and section 625, which covered the application and processing fees. Our approval of the revised rule, including the removal of these sections, does not constitute a relaxation of the SIP, since any and all relevant portions of these sections have been incorporated into the revised rule.

We approved the previous LDEQ Chapter 6 banking rule on July 2, 1999. That SIP approval did not include section 611, Mobile Source Emission Reductions, which the State had promulgated in August 1994, but did include sections 621, 623 and 625. Section 623 covered the withdrawal, use and transfer of ERCs. Section 625 covered the application and processing fees. We are granting approval of the LDEQ revised Chapter 6 bank rule to reflect the removal of sections 611, 621, 623 and 625.

The purpose of the revised rule is to establish the means of enabling stationary sources to identify and preserve or acquire emission reductions for New Source Review offsets. This purpose provides flexibility to stationary sources when they undergo NNSR, allowing sources in need of emissions offsets to identify another stationary source that may have surplus emission reductions available for purchase as NNSR offsets. Although Section 601 states that the purpose of the rule is to ''identify and preserve'' emission reductions for NNSR offsets, the revised rule does not itself provide a mechanism for ''preserving'' emission reductions until the permitting stage. That is, under LAC 33:III.617(C)(2), emission reductions can only be preserved after they are identified in the ERC certificate and LDEQ determines during the permit review process that they are ''Surplus When Used.''

Section 553(d) of the Administrative Procedure Act generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. If, however, an Agency identifies a good cause, section 553(d)(3) allows a rule to take effect earlier, provided that the Agency publishes its reasoning in the final rule. EPA is making this action effective immediately because this rule is related to the Baton Rouge 1-hour ozone Attainment Plan and Transport State Implementation Plan, on which the EPA intends to take imminent action (see 67 FR 50391, August 2, 2002). In conjunction with its August 2, 2002, proposed approval of the attainment demonstration, EPA proposed to extend the ozone attainment date for the Baton Rouge area to November 15, 2005, while retaining the area's current classification as a serious ozone nonattainment area and to withdraw EPA's June 24, 2002, rulemaking determining nonattainment and reclassification of the BR area (67 FR 42687). The effective date of EPA's June 24, 2002, nonattainment determination and reclassification is imminent. Furthermore, making this action effective immediately does not impose any additional requirements, because the underlying regulations are already effective under state law.

II. What Did EPA Propose?

In spite of the fact that the revised rule is named an Emission Reduction Credit Banking regulation, it does not establish an ERC bank, and we therefore did not propose approval of the rule as an ERC bank. The program established by the revised rule merely functions as a bulletin board to facilitate stationary source communications and offset purchases before certification and use of ERCs in an NNSR permit application. Similarly, the program established by the revised Chapter 6 rule is not itself a market-based program for achieving air quality improvements, and is therefore not an EIP as defined by the EPA. Instead, the program may be used to reduce the administrative burden experienced by stationary sources obtaining emission reductions as a part of New Source Review permitting. Accordingly, we proposed approval of the revised Chapter 6 rule with the understanding that the program it establishes will be used in conjunction with the revised Chapter 5 NNSR rule to facilitate stationary source communications and offset purchases before certification and use of an ERC in an NNSR permit application.

An emissions banking rule that functions merely to facilitate communication between stationary sources is not within the scope of the guidance document ''Improving Air Quality with Economic Incentive Programs,'' EPA–452/R–01–011 (EPA Office of Air and Radiation, January 2001) (the EIP Guidance). We therefore did not review the revised rule for consistency with the EIP Guidance.

We proposed approval of the rule as meeting the requirements for SIP approval under Title I Part D and section 110 of the Act.

III. What Comments Did EPA Receive and What are EPA's Responses to Comments?

The Steering Committee of the Baton Rouge Ozone Task Force, the Leadership Team of the Baton Rouge Ozone Task Force, the Louisiana Chemical Association and the Louisiana Mid-Continent Oil and Gas Association comments.

Comment: Each of these parties commented by providing a statement of support for our proposed approval of the LDEQ revised ERC regulation.

Response: We have considered these statements of support in making our final determination.

Louisiana Generating LLC Comment

Comment: Louisiana Generating LLC (LaGen) commented that LDEQ's proposed Attainment Plan/Transport SIP revisions contain a proposed Control Strategy Element, Section 4.2.1 Permitting NO_X Sources, that could result in the imposition of the equivalent of the nonattainment rules in an attainment area without authority of law. LaGen stated that the revised LDEQ bank regulation is not approvable to the extent that any of the provisions of the regulation could be implemented to support requiring offsets of new facilities or major modifications in attainment parishes.

Response: The stated purpose of the LDEQ ERC revised rule in section 601 is to establish the means of enabling stationary sources to identify and preserve or acquire emission reductions for NSR offsets. As noted above, the program established by the revised rule does not function as an ERC banking or trading program, but merely as a bulletin board to facilitate stationary source communications and offset purchases before certification and use of ERCs in an NNSR permit application. The revised rule does not contain any provisions that could be implemented to support requiring offsets of new facilities or major modifications in attainment parishes. We therefore do not find in this comment any basis for disapproval of the proposed ERC bank rule.

State of Louisiana Department of Environmental Quality comments

Comment: LDEQ strongly supported our proposed approval, but requested several corrections and clarifications. One comment stated that our proposed approval notice at 67 FR 48086 indicated that LDEQ defined the term ''Surplus Emission Reductions'' whereas the rule at LAC 33:III.605 defines the term ''Surplus'' but not ''Surplus Emission Reductions'.

Response: We have considered these statements of support in making our final determination.

The LDEQ comment regarding ''Surplus Emission Reductions'' is correct. The referenced sentence in our proposed approval notice should have read: '''Surplus'' emission reductions are defined in LAC 33:III.605 as emission reductions voluntarily created for an emissions unit; not required by any local, state or federal law, regulation, order, or requirement; and in excess of reductions used to demonstrate attainment of federal and state ambient air quality standards.''

Comment: The second LDEQ comment indicated the appearance of missing text at 67 FR 48086.

Response: LDEQ correctly noted a typographical error in our proposed approval notice, although the error consisted of extra text (the words ''the voluntary reduction'') rather than missing text. The referenced sentence in our proposed approval notice should have read: ''Emissions reductions below these ''baseline emissions'' are considered surplus, and under the rule are calculated by subtracting future allowable emissions after the reductions from the baseline emissions.''

Comment: The third LDEQ comment requested clarification that the ''surplus'' determination is made at the time a permit application that relies upon the reductions as offsets is deemed administratively complete. Our proposed approval notice at 67 FR 48088 indicated that it was at the time of the State's evaluation of the permit application.

Response: We agree with LDEQ that a ''surplus'' determination is made at the time a permit is deemed administratively complete, as is apparent from the definition of ''surplus'' in Section 605 of the revised Louisiana rule, and from Section 617(a), which says that LDEQ will review an application for ERCs when a request is submitted to use the ERCs as offsets. Thus, the State's verification that the ERCs are surplus must be conducted when they are to be used, not when they are acquired (or submitted for certification or purchased). We agree with LDEQ that the most appropriate time for LDEQ to make its review and determination as to ''surplus'' is after the application is deemed administratively complete. (This timing is consistent with EPA policy regarding determinations for netting purposes.)

Comment: LDEQ commented that the State has recently promulgated and revised the NO_X control regulation in Chapter 22. Our proposed approval notice stated that the State has recently revised the NO_X control regulation in Chapter 22.

Response: We agree with LDEQ that the State has recently promulgated and revised the NO_X control regulation.

Tulane Environmental Law Clinic Comments

Tulane submitted the comments by fax on August 26, 2002. The EPA is under no obligation to extend the comment period or to accept late comments. We decided to accept comments which were received by our office by close-of-business on August 26, 2002. This time frame corresponds to the estimated travel time for first class mail for a letter mailed and postmarked on the last day of the comment period, August 22, 2002.

Comment: The compliance date for NO_X sources is May 1, 2005. Voluntary NO_X reductions before this date could be deemed surplus and therefore eligible for use as emission offsets, which could allow facilities to offset new VOC emissions by early RACT implementation.

Response: The EPA disagrees with the commenter's interpretation that facilities which elect to implement RACT before the compliance date required by the rule, May 1, 2005, would generate reductions eligible for use as emission offsets.

Louisiana promulgated its revised NO_X rules on February 20, 2002 (Louisiana Register, Vol. 28, No. 2). On February 27, 2002, the State submitted to EPA the revised NO_X rules for the Baton Rouge area and its Region of Influence. The revised NO_X rule requires certain affected categories of NO_X-generating facilities to achieve RACT ''as expeditiously as possible, but no later than May 1, 2005.'' This date takes into consideration the time affected categories of NO_X-generating facilities may need to procure, calibrate and implement RACT. On July 23, 2002, the EPA proposed approval of the SIP revisions to regulate emissions of NO_X to meet requirements of the CAA (67 FR 48095). Section 173(c)(2) of the Act states that reductions otherwise required by the Act are not creditable as offsets. Although the rule permits affected categories of NO_X-generating facilities to achieve compliance with NO_X RACT no later than May 1, 2005, the rule became effective when promulgated. Therefore, facilities achieving NO_X RACT compliance before May 1, 2005, are creating emission reductions as required by law. Therefore, such facilities will not obtain ERCs and cannot offset VOC emissions by early RACT implementation. Furthermore, emissions decreased by a voluntary action must be permanent in order to meet the surplus ERC criteria. Because the rule provides for compliance no later than May 1, 2005, reductions made before that date could not be considered permanent, and therefore could not be surplus.

For the above reasons, the comment does not indicate that any change to the rule is required.

Comment: Tulane states, as an example of a ''segmented approach'' by which they charge that EPA has avoided addressing how various state rules will operate together, that EPA acknowledged at 67 FR 48097 that Louisiana will need to develop a two-balance system for tracking NO_X reductions, but deferred analysis of that issue to a ''separate **Federal Register** document'' that has yet to be issued.

Response: We disagree, both as to the general proposition that a ''segmented approach'' allowed the EPA to avoid issues, and as to the specific charge that EPA failed to present the promised analysis of the two-balance NO_X reduction system.

We first note that both our proposed approval of the revised Chapter 6 rule and our proposed approval of the revised Section 504 rule (NNSR) addressed the general topic: ''How Does the State's NSR Regulation in Chapter 5 Interact With the NO_X Control Regulation in Chapter 22 and the Revised Banking Regulation in Chapter 6.''

Regarding the ''deferred analysis'' comment, the full sentence from which the above quotation was taken reads as follows: ''We will be proposing action on Louisiana's ERC accounting in a separate **Federal Register** document.'' That document was our proposed approval notice of the LDEQ revised ERC rule, which contained substantial discussion of the workings of the two-balance ERC system. See 67 FR 48087–48089. In addition, we requested in our proposed approval of the Chapter 5 NNSR rule ''that in response to comments on EPA's proposed approval of the Chapter 5 and Chapter 6 rules, the State affirm and detail the procedures for the determination of NO_X surplus ERCs resulting from the split emission limitations for the NO_X RACT rule in Chapter 22''. 67 FR 48089. Additional discussion of this issue appears later in this section.

Comment: VOC increases from the Interpollutant Trading and NO_X rules will have a disproportionate impact on minority communities, contrary to EIP Guidance, especially sections 16.2 and 16.9.

Response: The purpose of the revised ERC rule is to establish the means of

enabling stationary sources to identify and preserve or acquire emission reductions for New Source Review offsets. Since the rule does not by itself directly reduce emissions or improve air quality, and is instead intended solely to enable stationary sources to identify and acquire NO_X and VOC offsets for NNSR purposes, the rule was reviewed as a component of the SIP related to the NNSR offsets rule, not as an Economic Incentive Program. Thus, the EIP Guidance is not applicable to the revised ERC rule.

The revised rule does not contain any reference to an inter-precursor trading (that is, the trading of emission reductions of one pollutant's precursors for emission reductions of a different precursor for that pollutant) program. The purpose of the rule does not include inter-precursor, or for that matter, any emissions trading. The new source permitting regulation in Chapter 5, on the other hand, refers to what we consider inter-precursor trading. Under the revised Chapter 5 procedure, the State's verification that the ERCs are surplus must be conducted when they are to be used, not when they are acquired (or submitted for certification or purchased). Thus, inter-precursor trades are appropriately reviewed, evaluated and verified under the NSR program at the time of use. The comment is therefore not relevant to our approval of the proposed ERC bank rule. Further discussion of this issue will appear in our final rule regarding the revised NNSR rule, to be published in a separate **Federal Register** document.

Comment: The ERC bank is broken, is awaiting audit, and is not capable of tracking the expanded and more complicated emission offsets proposed in Louisiana's NO_X and NSR rules. EPA should not approve any banking rule until the concerns raised in the public petition for an audit of the bank are addressed.

Response: We disagree that the program established by the revised ERC rule is broken. As stated earlier, the purpose of the LDEQ ERC revised rule is to establish the means of enabling stationary sources to identify and ''preserve'' or acquire emission reductions, the acceptability of which is later determined by the LDEQ, in the permitting process for NSR offsets. In spite of the fact that the revised rule is named an Emission Reduction Credit Banking regulation, the State did not adopt, nor did we propose to approve, the revised rule to function as an ERC bank or trading program. Rather, the revised rule merely provides a bulletin board to facilitate stationary source communications and offset purchases before potential certification and potential use in an NSR/NNSR permit application. The so-called ''bank'' in the revised rule will not itself provide ERCs that may be used for NSR/NNSR trading. The State makes a case-by-case determination in each individual permit application process about the validity of the ERCs relied upon in an application by a source owner/operator.

The revised ERC bank rule removes the necessity that ERCs be tracked to ensure that the bank contains sufficient ERCs for attainment demonstration contingency purposes. Our action approves a revision that is simplifying the function of the bank, not complicating it as indicated by the comment.

Comment: The deletion in the proposed ERC rule of language clearly disqualifying emissions reductions taken pursuant to a compliance order or consent decree from use as emissions offsets opens the door to illegal offsetting. Section 173(c)(2) prohibits the banking of credits for any emission reductions otherwise required by the Act.

Response: We disagree that the definitions of ''surplus'' and ''enforceable'' in the revised ERC rule open the door to illegal offsetting. As stated above, ''surplus'' emission reductions are defined in LAC 33:III.605 as, among other things, emission reductions not required by any local, state or federal law, regulation, order, or requirement. Compliance orders and consent decrees are orders as well as requirements of the Act, and emission reductions required under such an order or decree cannot be classified as surplus.

Comment: By eliminating the requirement that emission reductions be creditable under the definition of netting, Louisiana's proposed ERC rule violates federal law and must not be approved. Netting is a form of emission offsetting. LDEQ is now proposing to allow netting of emission reductions that do not qualify as ERCs, in violation of EPA policy and the Act. The definition of netting in the ERC rule violates section 173(c) of the Act and therefore LDEQ must not adopt the proposed rule as written.

Response: We disagree that netting is a form of emission offsetting. The term netting is derived from the NSR definition of ''net emission increase'' at 40 CFR 51.165 and 40 CFR 52.21. The net emission increase due to a specific project is the project emission increases plus any creditable, contemporary emission increases and decreases at the stationary source. Creditable in this sense refers among other things to the emissions not having been relied upon in the issuance of a major NSR permit during the contemporaneous period, as detailed at 40 CFR 51.165. The contemporaneous period in Louisiana has been defined as five years. Netting is the summation of the creditable contemporaneous emission increases and decreases at the facility. If the project emission increase exceeds the major modification threshold but the creditable, contemporaneous emission decreases are large enough, the net emission increase may be less than the major modification threshold. In this instance, the source would be said to ''net out'' of major source NSR review.

Section 173(c) of the Act refers to emission offsets required for emission increases resulting from major modifications and major new sources. It applies to major emission increases that result after the netting has been performed in the determination of the net emission increase. By previously requiring that all creditable, contemporaneous emission decreases be surplus ERCs from the bank, the LDEQ requirement for netting was more stringent than the federal requirement. By removing the surplus ERC requirement from the netting determination, the LDEQ NSR netting requirement is now equivalent to the federal requirement in 40 CFR 51.165 and 40 CFR 52.21.

Comment: Section 603(A) of the revised ERC rule apparently allows for trading of ERCs between five attainment parishes and five parishes in the Baton Rouge nonattainment area, in violation of section 173(c)(1) of the Act. If it is LDEQ's intent to allow such trading, it should rescind the rule immediately as contrary to federal law. If it is not LDEQ's intent to allow such trading, it should clearly so state within the regulation.

Response: We agree that section 173(c)(1) of the CAA does not permit trading of offsets between attainment areas and nonattainment areas. We disagree that Section 603(A) of the revised ERC rule permits such trading. Instead, Section 603(A) specifically provides that ''[o]ther sources located in EPA-designated ozone attainment areas may not participate in the emissions banking program.'' If the commenter is specifically concerned about the reference in Section 603(A) to Calcasieu Parish, which states that ''[m]inor stationary sources located in ozone nonattainment areas or Calcasieu Parish may submit ERC applications for purposes of banking,'' we respond that the reductions from Calcasieu Parish sources (or sources in any other attainment area) may not be used as

offsets by sources in nonattainment areas, under Section 504(F)(9) of the revised NNSR rule. The reference to Calcasieu in Section 603(A) is relevant to sources in *Calcasieu Parish* that are seeking offsets in accordance with LAC 33:III.510.

In addition, as mentioned previously, the purpose of the LDEQ ERC revised rule is to establish the means of enabling stationary sources to identify and ''preserve'' or acquire emission reductions, the acceptability of which is later determined by the LDEQ, in the permitting process for NSR offsets. In spite of the fact that the revised rule is named an Emission Reduction Credit Banking regulation, the State did not adopt, nor did we propose to approve, the revised rule to function as an ERC bank or trading program. Rather, the revised rule merely provides a bulletin board to facilitate stationary source communications and offset purchases before potential certification and potential use in an NSR/NNSR permit application. The so-called ''bank'' in the revised rule will not itself provide ERCs that may be used for NSR/NNSR trading. The State makes a case-by-case determination in each individual permit application process about the validity of the ERCs relied upon in an application by a source owner/operator.

Comment: EPA must not approve the ERC rule revisions because LDEQ cannot provide assurance, as required by the Act, that it has adequate personnel or funding to maintain the program.

Response: The purpose of the LDEQ ERC revised rule is to function as a bulletin board to facilitate stationary source communications and offset purchases before certification and use in an NNSR permit application. The ''bank'' established by the revised rule will not itself provide ERCs that may be used for trading. The revised rule removes the necessity that ERCs be tracked by the State, and the requirement that there be sufficient escrowed ERCs for attainment demonstration contingency purposes. The state's and our action is simplifying the function of the bank.

Comment: Louisiana's NO_X rule providing for seasonally fluctuating emission limitations for stationary sources is unworkable, introducing unnecessary complication and the potential for abuse, and reducing the public's ability to monitor the program.

Response: Because the revised rule provides for a bulletin board rather than a traditional bank, the stationary sources seeking to sell or buy ERCs will bear the brunt of whatever additional complication is introduced by the seasonal approach contained in the NO_X rule. LDEQ will not be required to track or monitor a stored balance of offsets, but instead primarily to evaluate the validity of ERCs at the time it receives application to use them. The simplified function of the bank will likewise increase the public's ability to monitor the program.

Comment: EPA has stated that the NO_X rule does not address the requirement to keep separate documentation for the certification, determination, and recordkeeping of NO_X ERCs during the ozone and non-ozone seasons. EPA proposes to accept promises in a letter from Mr. Dale Givens regarding the operation of the bank. As of July 23, 2002, the State had not detailed the procedures required.

Response: In our proposed approval of the revised Chapter 6 ERC rule, we stated that the Chapter 6 rule (not the Chapter 22 NO_X rule, as the commenter stated) ''does not address the requirement to keep separate documentation for the certification, determination, and recordkeeping of NO_X ERCs during the ozone and non-ozone seasons. The identification, certification, acquisition, recordkeeping and determination of ''Surplus When Used'' emission reduction credits must be for both the ozone season and the non-ozone season time periods.''

We did not condition our approval of the Chapter 6 rule on the receipt of additional information from the State. The stated purpose of the revised emissions banking rule in Chapter 6 is to enable stationary sources to identify and acquire emission reductions for NSR purposes. The Chapter 6 rule does not establish a ''bank'' requiring tracking by the State of sources' claimed ERCs. The Chapter 6 rule only establishes a bulletin board for use by source owners and operators. The LDEQ makes the determination whether a source's claimed ERCs are surplus through the Chapter 5 nonattainment NSR rules. The identification, certification, acquisition, recordkeeping and determination of ''Surplus When Used'' emission reduction credits must be for the ozone season and the non-ozone season time periods. The State indicated by letter from Mr. Dale Givens to EPA dated May 3, 2002 that the State would implement the rule by operating the Chapter 6 emissions reduction credits bulletin board in such a manner. EPA has received information from the State supplementing its May 3, 2002, letter and further supporting the State's intention to implement the Chapter 5 NSR rule in a manner that provides for separate identification, certification, acquisition, recordkeeping and determination of ''Surplus When Used'' emission reduction credits for the ozone season and for the non-ozone season time periods. For these reasons, the comment does not indicate that any change to the rule is required.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

B. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

C. Executive Order 13175

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, ''Consultation and

Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. This rulemaking does not affect the communities of Indian tribal governments. Accordingly, the requirements of Executive Order 13175 do not apply.

D. Executive Order 12898

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The EPA believes that this rule should not raise environmental justice issues. The overall result of the program is regional reductions in ozone. Because this program will likely reduce local ozone levels in the air, and because there are additional provisions under the CAA to ensure that ozone levels are brought into compliance with national ambient air quality standards, it appears unlikely that this program would permit adverse affects on local populations.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Pursuant to 5 U.S.C. 605(b), I certify that today's rule would not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

F. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA believes, as discussed above, that because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty, it does not constitute a Federal mandate, as defined in section 101 of the UMRA.

G. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This action merely approves a state rule implementing a Federal standard, and does not alter the relationship of the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this final action.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

I. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S.

House of Representatives, and the Comptroller General of the United States before publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 26, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 20, 2002.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart T—Louisiana

2. In § 52.970 the table in paragraph (c) is amended under chapter 6 by removing the entries for sections 621, 623, and 625 and revising the entries for sections 601, 603, 605, 607, 613, 615, 617, and 619 to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP

State citation	Title/subject	State approval date	EPA approval date	Comments
*	*	*	*	*
Chapter 6—Regulations on Control of Emissions Reduction Credits Banking				
Section 601.	Purpose	Feb. 2002, LR 28:301	September 27, 2002 and FR cite.	
Section 603.	Applicability	Feb. 2002, LR 28:301	September 27, 2002 and FR cite.	
Section 605.	Definitions	Feb. 2002, LR 28:301	September 27, 2002 and FR cite.	
Section 607.	Determination of Creditable Emission Reductions	Feb. 2002, LR 28:302	September 27, 2002 and FR cite.	
Section 613.	ERC Bank Recordkeeping and Reporting Requirements.	Feb. 2002, LR 28:303	September 27, 2002 and FR cite.	
Section 615.	Schedule for Submitting Applications	Feb. 2002, LR 28:304	September 27, 2002 and FR cite.	
Section 617.	Procedures for Review and Approval of ERCs ...	Feb. 2002, LR 28:304	September 27, 2002 and FR cite.	
Section 619.	Emission Reduction Credit Bank	Feb. 2002, LR 28:305	September 27, 2002 and FR cite.	
*	*	*	*	*

[FR Doc. 02–24638 Filed 9–26–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–62–1–7571; FRL–7384–5]

Approval and Promulgation of Implementation Plans; Louisiana; Control of Emissions of Nitrogen Oxides in the Baton Rouge Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the Louisiana State Implementation Plan (SIP). This rulemaking covers two separate actions. First, we are approving revisions to the Louisiana Nitrogen Oxides (NO_X) rules in the Baton Rouge (BR) 1-hour ozone nonattainment area (BR area) and its Region of Influence as submitted to us by the State on February 27, 2002 (the February 27, 2002, SIP revision). In this document, we will refer to this revision as Action Number 1. The revisions concern Reasonably Available Control Technology (RACT) for point sources of NO_X in the BR area and its Region of Influence. Second, we are approving revisions to the Louisiana NO_X rules for lean burn engines within the BR ozone nonattainment area as submitted to us on July 25, 2002 (the July 25, 2002, SIP revision). In this document, we will refer to this revision as Action Number 2. The February 27, and July 25, 2002, SIP revisions will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in the BR area. The EPA is finalizing approval of these 2 SIP revisions to regulate emissions of NO_X as meeting the requirements of the Federal Clean Air Act (the Act).

The EPA is making these 2 SIP revisions effective immediately. *See* section 2 of this document for more information.

DATES: This rule will be effective on September 27, 2002.

ADDRESSES: Copies of the Technical Support Document (TSD) and other documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the

appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality (LDEQ), 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana, 70810.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691, and *Shar.Alan@epa.gov.*

SUPPLEMENTARY INFORMATION:

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1. What Actions are we Taking in This Document?

On July 23, 2002, we proposed to approve the Louisiana's rule revisions to LAC 33:III, Chapter 22, ''Control of Emissions of Nitrogen Oxides,'' (AQ215), as a revision to the Louisiana SIP for point sources of NO_X in the BR area and its Region of Influence. *See* 67 FR 48095.

The BR area constitutes the 5 ozone nonattainment parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge. The Region of Influence constitutes the 4 ozone attainment parishes of East Feliciana, Pointe Coupee, St. Helena, and West Feliciana. This SIP revision establishes RACT for point sources of NO_X in all these 9 parishes. RACT is defined as the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility. *See* 44 FR 53761, September 17, 1979. The State of Louisiana submitted this revision to us as a part of the NO_X reductions needed for the BR area to attain the 1-hour ozone standard. These NO_X reductions will assist the BR area to attain the 1-hour ozone standard.

Today, we are finalizing our approval of Action Number 1.

Action Number 2 concerns RACT for lean burn engines in 5 ozone nonattainment parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge. *See* above for definition of RACT. On July 31, 2002, we proposed to approve Louisiana's rule revisions to LAC 33:III, Chapter 22, ''Control of Emissions of Nitrogen Oxides,'' (AQ224), as a revision to the Louisiana SIP for lean burn engines within the BR ozone nonattainment area. *See* 67 FR 49647. These revisions would require lean burn engines to adopt RACT to assist the 5 nonattainment parishes to achieve the 1-hour ozone standard. *See* 67 FR 49647. We used a procedure known as ''parallel processing'' in proposing to approve these revisions. *See* 40 CFR part 51, Appendix V for more information on ''parallel processing.'' Briefly, parallel processing allows a State to submit a SIP revision prior to actual adoption by the State and provides an opportunity for the State to consider EPA comments prior to submission of a final SIP revision for final EPA review and action.

Today, we are finalizing our approval of Action Number 2.

By finalizing our approval of Action Numbers 1 and 2, we are agreeing that the State of Louisiana will be implementing RACT for major point sources of NO_X in the BR area and its Region of Influence. Our TSD contains more information concerning Action Numbers 1 and 2, including technical justification for our action. For additional information concerning NO_X, nonattainment areas, SIPs, federal approval of a SIP, and RACT you can refer to either 67 FR 48095 (July 23, 2002), or 67 FR 49647 (July 31, 2002).

2. Why are we Making This Action Effective Immediately?

Section 553(d) of the Administrative Procedure Act generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, if an Agency identifies a good cause, section 553(d)(3) allows a rule to take effect earlier, provided that the Agency publishes its reasoning in the final rule. The EPA is making this action effective immediately because this rule is related to the Baton Rouge 1-hour ozone Attainment Plan and Transport State Implementation Plan, on which the EPA intends to take imminent action (see 67 FR 50391, August 2, 2002). In conjunction with its August 2, 2002, proposed approval of the attainment demonstration, EPA proposed to extend the ozone attainment date for the BR area to November 15, 2005, while retaining the area's current classification as a serious ozone nonattainment area and to withdraw EPA's June 24, 2002, rulemaking determining nonattainment and reclassification of the BR area (67 FR 42687). The effective date of EPA's June 24, 2002, nonattainment determination and reclassification is imminent. Furthermore, making this action effective immediately does not impose any additional requirements, because the underlying regulations are already effective under State law.

3. When did the Public Comment Periods for our Proposals Expire?

The public comment period for Action Number 1 (67 FR 48095) expired on August 24, 2002.

The public comment period for Action Number 2 (67 FR 49647) expired on September 1, 2002.

4. Who submitted comments to us?

We received written comments from the Baton Rouge Clean Air Coalition (BRCAC), M. D. Mc Daniel and Associates (MDA) on behalf of the Baton Rouge Ozone Task Force, Louisiana Chemical Association (LCA), Louisiana Mid-Continent Oil and Gas Association (LAMOGA), Louisiana Generating, LLC (LG), LDEQ, NRG Energy, Inc. (NRG), and Tulane Environmental Law Clinic (TELC) on behalf of the Louisiana Environmental Action Network (LEAN) concerning Action Number 1.

We received written comments from LDEQ, LAMOGA and TELC concerning Action Number 2.

5. How do we Respond to the Submitted Written Comments?

Our response to written comments concerning Action Number 1 (67 FR 48095) are as follows:

Comment #1: The BRCAC, MDA, LCA, LAMOGA, LDEQ, and LG expressed their support for our July 23, 2002 proposal (67 FR 48095).

Response to comment #1: We appreciate the commenters' support of our July 23, 2002 proposal (67 FR 48095) and have considered these comments in making our final determination.

Comment #2: The LDEQ commented on spelling of the East Feliciana and West Feliciana parishes in section 15 of our July 23, 2002 proposal (67 FR 48095).

Response to comment #2: We appreciate the comment and have corrected the typographical error in spelling of these two parishes.

Comment #3: The NRG commented that the definition of ''averaging capacity'' in subsection B, Chapter 22 uses the actual heat input from two prior ozone seasons and thus is limiting in nature. The Commenter proposes language for the definition that includes the term ''other acceptable periods'' instead.

Response to comment #3: Subsection B, Chapter 22 defines the averaging capacity as ''the average actual heat input rate in MMBtu/hour at which an affected point source operated during the ozone season of the two calendar years of 2000 and 2001 (*e.g.,* total heat input for the period divided by the actual hours of operation for the same period).'' The provision goes on to provide, ''Another period may be used to calculate the averaging capacity if approved by the department. For units with permit revisions that legally curtailed capacity or that were permanently shut down after 1997, the averaging capacity is the average actual heat input during the last two ozone seasons of operation before the curtailment or shutdown.'' The rationale for specifically stating the two calendar years of 2000 and 2001 in definition of ''averaging capacity'' is to ensure consistency and replicability of Chapter 22 with the photochemical grid modeling inputs used for the BR area attainment demonstration. The term ''acceptable periods'' as suggested by the commenter could introduce confusion or ambiguity for compliance determination purposes, as well. The current definition in Chapter 22, as stated above, does provide for a source to use alternative periods pending approval by the LDEQ. Therefore, we believe that the definition, as adopted by the State, offers a harmonized blend of flexibility, consistency, and specificity and are approving the rule without any changes to subsection B.

Comment #4: The NRG commented that use of averaging capacity in subsections D.3 and D.4 of Chapter 22 essentially precludes operation of a facility at its maximum capacity if the owner elects to use a ton per day or pound per hour emission cap.

Response to comment #4: As stated previously, the rationale for specifically stating the two calendar years of 2000 and 2001 in the definition of ''averaging capacity'' is to ensure consistency and replicability of Chapter 22 with the photochemical grid modeling inputs used for the BR area attainment demonstration. Subsections D.3 and D.4 allow for a 30-day rolling average as the basis for calculating mass of NO_X emitted per unit of heat input (lb NO_X/MM Btu). The 30-day rolling average window is long enough and flexible enough to allow for potential fluctuations associated with the demand for electricity. The cap, as calculated by Equation D–1 of Chapter 22, is offered as an alternative and provides additional flexibility. If a source operated at or near its maximum capacity during the two calendar years of 2000 and 2001, then the source would be assigned a ton per day or pound per hour emission cap for NO_X that is representative of its historical operations. In response to a similar comment, the State wrote and we agree,

> ''the rule limits an individual unit to its historical averaging capacity as determined by the operation in the ozone seasons of 2000 and 2001. The owner can also request DEQ approval for a different historical period if he knows that the 2000–2001 period is not representative of typical operation. The rule was written this way because the actual, rather than permitted, 1997 emissions were used to establish the base case for the model. The 1997 actuals were projected to the baseline for 2005. The NO_X control rule was designed to reduce the baseline emissions to the point that attainment with the standard was attained. If permitted emissions had been used to establish the baseline, more stringent controls would have been required to reach attainment. If an owner decides to group several sources under an emission cap, he would determine his cap by adding up all of the allowed emissions of the capped sources and then operate so as not to exceed the cap. In so doing, he is free to operate any unit or units in the cap at a rate(s) that is above the averaging capacity as long as the cap is not exceeded. This gives an owner a lot of flexibility to optimize his operation to his best interests.''

We do not believe that an electrical power generator would want to bear the risk of having to adopt more stringent control measures or to operate under a year-round (as opposed to a seasonal) NO_X control strategy for the sake of a higher cap limit that is not historically representative of its recent operations. Thus, we are approving the rule without any changes to subsections D.3 and D.4.

Comment #5: The NRG commented that compliance with the emission limits for all sources associated with the generation of electric power should be on a 30-day rolling average basis.

Response to comment #5: We disagree with the commenter. We agree with the State's response to a similar comment. In response to comments during the State rulemaking, LDEQ stated:

> ''the basis for the Baton Rouge area is the one-hour ozone standard that requires compliance in each and every hour of the day. Typically, non-electric facilities operate at a steady rate with steady NO_X emissions and the averaging time is not very significant. However, the nature of an electric utility is to raise and lower rates as load demands vary. There is typically a very large variation in day-to-day electricity demand as weather fronts, rain and other conditions change to affect atmospheric temperatures. This causes large changes in NO_X emissions. The DEQ believes that a tighter control on electric utilities is necessary to prevent exceedances of the standard from occurring.''

In other words, allowing a 30-day rolling average for electric utility boilers could result in exceedances of the one-hour standard due to varying NO_X emissions caused by load variations.

Comment #6: The NRG presents a hypothetical example that should a generating unit experience an unexpected shutdown the demand for electricity must be met by other generators and the averaging capacity in section E.1.d is restrictive. The commenter then suggests that throughout Chapter 22, the term ''averaging capacity'' for sources associated with the electrical power generation should be replaced with ''maximum rated capacity.''

Response to comment #6: We disagree. There are multiple layers of operational flexibility embedded in the Chapter 22 rule. First, Chapter 22 allows for seasonal NO_X control (May 1 to September 30 of each year as opposed to a year-round) measures. *See* subsection A.2. The seasonal control measure by itself offers a significant degree of latitude to an affected source. Replacing the averaging capacity with maximum rated capacity as suggested by the commenter would create an artificially higher cap limit for these sources which is unrepresentative of their recent historical operations, and in turn the attainment demonstration strategy could call for implementation of more stringent control measures for the BR area. Second, Chapter 22 allows for use of the peaking services option. For the definition and emission factors of ''peaking service,'' see subsection B in Chapter 22, and Table I of this document, respectively. Third, Chapter 22 allows for the facility-wide averaging plan as an alternative method of compliance. Subsection E.1.b(i) offers a 30-day rolling average limit for each individual unit that fires gaseous or liquid fuels and chooses to participate in the facility-wide averaging plan. Subsection E.1.c(i) offers a 30-day rolling average limit for each individual unit, including those in a coal-fired electrical power generation system, that chooses to participate in the facility-wide averaging plan. We believe that routine maintenance, generators' know how/training, good housekeeping measures, and preventive practices should be the determining factors in minimizing or eliminating occurrences

of unexpected shutdowns rather than the Chapter 22 rule. We thus disagree with the commenter in this regard.

Comment #7: The NRG commented that limiting usage of secondary fuels to the average usage of secondary fuel in 2000 and 2001 is restrictive and unnecessary.

Response to comment #7: We disagree. The Chapter 22 rule actually benefits the source by avoiding year-round NO_X control requirements. See subsection A.2 of the Chapter 22 rule. The Chapter 22 rule is not overly restrictive, as it provides for an alternative method of compliance with the NO_X emission factors. Subsection D.2 allows the followings options for a source which is capable of firing more than one type of fuel (primary and back-up fuel(s)):

Subsection D.2.a states ''if a combination of fuels is used normally, the emission factor from Paragraph D.1 of this Section shall be adjusted by the weighted average heat input of the fuels based on the ozone season average usage in 2000 and 2001, or another period if approved by the department,''

Subsection D.2.b states ''if the boiler is normally fired with a primary fuel and a secondary fuel is available for back-up, the unit shall comply with the emission factor for the primary fuel while firing the primary fuel and with the emission factor for the secondary fuel while firing the secondary fuel. In addition, the usage of the secondary fuel shall be limited to the ozone season average usage of the secondary fuel in 2000 and 2001, or another period if approved by the department,'' and

Subsection D.2.c states ''if the secondary fuel is less than 10 percent of the weighted average, the owner or operator may choose to comply with the unadjusted limit for the primary fuel.''

As stated previously, the rationale for specifically stating the two calendar years of 2000 and 2001 in Chapter 22 is to ensure consistency and replicability in the photochemical grid modeling inputs used for the BR area attainment demonstration. Having enforceable limits for the secondary fuel usage, and adhering to a historically representative quantity of fuel usage would benefit the source by not having to adopt year-round and more stringent controls in order for the BR area to reach attainment. Therefore, we find that limiting usage of secondary fuels to the average usage of secondary fuel in 2000 and 2001 is neither restrictive nor unnecessary and thus disagree with the commenter in this regard.

Comment #8: The NRG commented that precluding the 30-day averaging of emissions could subject the state to regulatory takings claim.

Response to comment #8: The EPA's role in reviewing SIP submittals is to evaluate whether state choices meet the criteria of the Act. Federal inquiry into the economic reasonableness and other constitutionally protected rights of state action is not allowed under the Act (*see, Union Electric Co.,* v. *EPA,* 427 U.S. 246, 255–266 (1976); 42 U.S.C. 7410(a)(2)) other than for purposes of evaluating the reasonableness and availability of alternatives for purposes of a waiver of Federal preemption. The State has submitted information indicating that the administrative requirements of Louisiana law have been met. The EPA believes this rule can be approved pursuant to the Act based on our review of the LDEQ's responses to comments, taken together with the rest of the information in the administrative record for the SIP. We thus disagree with the commenter in this regard. In approving LDEQ's adopted NO_X rules, we also note the following: (a) The Chapter 22 rule calls for seasonal NO_X control (May 1 to September 30 of each year) measures. *See* subsection A.2 of the rule, and (b) the seasonal NO_X control measure by itself offers a significant degree of flexibility and latitude to an affected source.

Comment #9: The TELC requested an extension of 30 days to the public comment period.

Response to comment #9: The EPA is under no obligation to extend the comment period or to accept late comments. We decided to accept comments which were received by our office by close-of-business on August 26, 2002. This time frame corresponds to the estimated travel time for first class mail for a letter mailed and postmarked on the last day of the comment period, August 22, 2002.

Comment #10: The TELC commented that exemption of flares, incinerators, kilns and ovens in subsection B is a nonexisting section.

Response to comment #10: Chapter 22 is titled as ''Control of Emissions of Nitrogen Oxides (NO_X).'' Section 2201 is titled ''Affected Facilities in the Baton Rouge Nonattainment Area and the Region of Influence.'' Subsection B addresses the applicable definitions, and subsection C includes the exemptions. Therefore, the reference to subsection B, in the text of subsection C.7 of the rule, is valid and will remain unchanged.

Comment #11: The TELC has concerns with the emission reductions generated by facilities which are required to comply with the NO_X RACT requirements in Louisiana's revised NO_X rule. The commenter is concerned that facilities which elect to implement RACT before the compliance date required by the rule, May 1, 2005, could be considered to be doing so voluntarily. And as voluntary reductions, i.e., not required by federal or state law, these NO_X reductions could be deemed surplus, and therefore, eligible for use as emission offsets, including offsets of Volatile Organic Compounds (VOCs).

Response to comment #11: The EPA disagrees with the commenter's interpretation that facilities which elect to implement RACT before the compliance date required by the rule, May 1, 2005, would generate reductions eligible for use as emission offsets.

The revised NO_X rule requires certain affected categories of NO_X-generating facilities to achieve RACT ''as expeditiously as possible, but no later than May 1, 2005.'' This date takes into consideration time affected categories of NO_X-generating facilities may need to procure, calibrate and implement RACT. LDEQ has noted, and EPA agrees, that the May 1, 2005 date is reasonable because in the three years from the promulgation to compliance, owners and operators will have to put together design and engineering packages, procure control equipment, complete construction, shakedown and debug new equipment, and bring the NO_X control equipment into normal operation. In many instances these activities will have to be coordinated with scheduled outages, which may also impact implementation schedules. Furthermore, during this same period, facilities in neighboring states will be attempting to accomplish these same activities, which could cause delays due to competition and overloading at engineering offices and equipment vendors' fabrication shops.

Section 173(c)(2) of the Act states that reductions otherwise required by the Act are not creditable as offsets. Louisiana has promulgated revisions to the Louisiana Administrative Code (LAC) at Part III, Section 504, which contains the rules for nonattainment New Source Review (NSR) procedures that apply to the Baton Rouge area. The NSR revisions include increases to the minimum offset ratios for new major stationary sources and major modifications to major stationary sources in the Baton Rouge area. The revisions also add minimum offset ratios for NO_X. The EPA proposed approval of Louisiana's revised NSR rules on July 23, 2002. (67 FR 48090). For additional information regarding NSR and offsets, see LAC III:33, Chapter

5, and the separate EPA rulemaking to be issued regarding that Chapter.

Although the NO_X rule permits affected categories of NO_X–generating facilities to achieve compliance with NO_X RACT no later than May 1, 2005, the rule became effective when promulgated on February 20, 2002 (Louisiana Register, Vol. 28, No. 2). Therefore, facilities achieving NO_X RACT compliance before May 1, 2005, are creating emission reductions as required by law. Such facilities will not obtain Emissions Reduction Credits (ERCs) and cannot offset VOC emissions by early RACT implementation. Furthermore, emissions decreased by a voluntary action must be permanent in order to meet the surplus ERC criteria. Because the rule provides for compliance no later than May 1, 2005, reductions made before that date could not be considered permanent, and therefore could not be surplus.

For the above reasons, the comment does not indicate that any change to the rule is required.

Comment #12: The TELC charges that LDEQ has taken inconsistent positions regarding modeling and the effects of NO_X reduction on attainment of the ozone NAAQS. The commenter points out that on January 26, 1996 (61 FR 2438), EPA granted an exemption from the RACT and NSR requirements for major stationary sources of NO_X, pursuant to section 182(f) of the Act. This exemption was based on modeling submitted by LDEQ in a 1994 petition that demonstrated that additional NO_X emission controls within the Baton Rouge area will not contribute to attainment of the ozone NAAQS for the area. On May 7, 2002 (67 FR 30638), EPA rescinded that exemption based on more recent modeling conducted for the Baton Rouge area, submitted by LDEQ September 24, 2001, that indicates that control of NO_X sources will help the area attain the ozone NAAQS. According to the commenter, this change in approach to NO_X regulation has the effect of creating ''loopholes in the law.''

Response to comment #12: The ''loopholes'' that the commenter complains of are addressed in comment and response 11, above. This response addresses only the commenter's apparent assertion that Louisiana's scientific approach to NO_X regulation is unfounded. The EPA disagrees with this argument. In granting the NO_X exemptions January 26, 1996 (61 FR 2438), EPA reserved the right to reverse the approval of the exemptions if subsequent modeling data demonstrated an ozone attainment benefit from NO_X emission controls. Photochemical grid modeling recently conducted for the Baton Rouge area SIP indicates control of NO_X sources will help the area attain the ozone NAAQS. The State of Louisiana therefore requested that EPA rescind the NO_X exemption based on this new modeling on September 24, 2001. In our proposed approval of the rescission of the NO_X waiver May 7, 2002, (67 FR 30638), we stated that we believed that the State had adequately demonstrated that additional NO_X reductions would contribute to attainment of ozone NAAQS. The State of Louisiana is not the only state that has requested that EPA rescind its NO_X waiver based on updated photochemical grid modeling information. Seven years elapsed between the LDEQ's previous modeling demonstration that additional NO_X reductions would not contribute to area's attainment, and the most recent modeling events demonstrating the Baton Rouge area to be NO_X limited. Pollution control technology, including air modeling, is a dynamic and evolving field. The model used by LDEQ to support its request for approval of the NO_X waiver was Urban Airshed Model (UAM) IV, which is an EPA-approved photochemical grid model. The model used by LDEQ to support its request for rescission of the NO_X waiver was UAM V. This represents a significant refinement in modeling technology. Additionally, emission inventory tools have been improved during this seven year period from when the State initially requested the NO_X waiver.

Comment #13: The TELC comments that the public has not been provided with the copy of the Governor's April 8, 2002, letter to EPA.

Response to comment #13: We disagree. In section 1 of our July 31, 2002 proposal (67 FR 49647), we specifically stated, ''on April 8, 2002, the Governor of Louisiana submitted a letter to us requesting that we propose approval of their rule revision concerning RACT for lean burn engines through parallel processing. *See* 40 CFR Part 51, Appendix V for more information on parallel processing.'' In addition, under the **ADDRESSES** portion of our July 31, 2002 proposal (67 FR 49647), we stated that: ''copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.'' The July 31, 2002, proposal (67 FR 49647) further lists both the LDEQ's and EPA's addresses at which the commenter could obtain or view the submittal package, including the April 8, 2002, letter from the Governor of Louisiana to EPA. The LDEQ noticed the rule in the March 20, 2002, issue of the Louisiana Register, and held a public hearing on April 24, 2002. Based on the foregoing information, we believe that the April 8, 2002, letter from the Governor of Louisiana to EPA and supporting documents contained in the State's submittal have been made available in the docket to the public, and therefore disagree with the commenter in this regard.

Comment #14: The TELC commented that the May 3, 2002, letter from Mr. Dale Givens of LDEQ to EPA was not made available to the public during the rulemaking and thus is a violation of due process.

Response to comment #14: We disagree. The May 3, 2002, letter from Mr. Dale Givens to EPA was made available as a part of the docket. *See* section 9 of our July 23, 2002, publication (67 FR 48095), and section 3 of the July 31, 2002, publication (67 FR 49647) in the **Federal Register**, respectively. For the reasons noted in Response #13 above, we believe that ample opportunity was provided to the public to review and comment on the documents supporting this rulemaking.

Comment #15: The TELC commented that removal of provisions (a) through (c) in subsection E.2 of Chapter 22 will mean removal of accountability/compliance requirements for facilities' trading plans.

Response to comment #15: The NO_X RACT rules EPA is approving today do not contain offsetting requirements for new facilities or major modifications in attainment parishes. Thus, EPA does not find any basis in this comment to withhold full approval of Action Numbers 1 and 2. The EPA proposed to approve revisions to the Louisiana emission reduction credit (ERC) banking program (67 FR 48083, July 23, 2002). The rule was promulgated by the State at LAC 33:III, Chapter 6 (Regulations on Control of Emissions Through the Use of Emission Reduction Credit Banking), as published in the Louisiana Register on February 20, 2002. Additional information on the ERC banking program is available in our rulemaking regarding that action. The ERC banking regulation establishes a means of enabling stationary sources to identify and preserve or acquire emission reductions for NSR emission offsets.

Provisions (a) through (c) in subsection E.2 of Chapter 22 outline the information that a facility would include in its trading plan. There are several provisions and safeguards in place elsewhere in Chapters 22 and 6

that provide for compliance and accountability of the rule. For example, provisions (a) through (g) in subsection F.7, Chapter 22 detail the information that a facility would need to include in its plan in order for that plan to be considered approvable during the pre-permit application phase. Subsections G and H in Chapter 22 each contain the requirements of Initial Demonstration of Compliance, and Continuous Demonstration of Compliance, respectively. For information concerning recordkeeping and reporting requirements on banking emission reduction credits see section 613 of Chapter 6. For information concerning determination of creditable emission reductions see section 607 of Chapter 6. Taking subsections F, G, and H in Chapter 22, and sections 607 and 613 in Chapter 6 together, we disagree with the commenter's position in this regard.

Comment #16: The TELC commented that the NO_X rule violates section 172(c) of the Act because it lacks requirements for minimum RACT.

Response to comment #16: We disagree. Although the Act does not define RACT, EPA has defined RACT as the lowest emission limitation that a particular source can meet by applying a control technology that is reasonably available considering technological and economic feasibility. *See* 44 FR 53761 (September 17, 1979). The RACT requirement is established by sections 182(b)(2) and 182(f) of the Act. Section 182(b)(2) requires States to implement RACT with respect to all major sources of volatile organic compounds (VOCs). Section 182(c) makes the requirements of section 182(b)(2) applicable to serious nonattainment areas, such as Baton Rouge. Section 182(f) states that the plan provisions required under section 182(b)(2) for major stationary sources of VOCs shall also apply to major stationary sources (as defined in section 302 and subsections 182(c), (d), and (e)) of NO_X. Taken together, these sections establish the requirements for Louisiana to submit as part of its SIP a NO_X RACT regulation for all major stationary sources of NO_X in ozone nonattainment areas classified as moderate and above. States may also choose to develop RACT requirements on a case by case basis, considering the economic and technical circumstances of an individual source.

The EPA has published Guidance Documents to assist States in developing RACT for affected sources. As stated in section 5 of our July 23, 2002 proposal (67 FR 48095), on November 25, 1992 (57 FR 55620), we published a document of proposed rulemaking entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement). The NO_X Supplement describes and provides preliminary guidance on the requirements of section 182(f) of the Act. The EPA has also identified basic factors for determining RACT technological and economic feasibility in identifying RACT measures. *See* 57 FR 18070 (April 28, 1992). Other EPA guidance memoranda, such as those included in the ''NO_X Policy Document for the Clean Air Act of 1990,'' (EPA–452/R96–005, March 1996), also provide more information about NO_X requirements. In addition, states can use information in EPA's guidance documents known as the Alternative Control Techniques (ACTs) to develop their RACT regulations. In section 5 of our proposal (67 FR 48095), we included a table listing of ACT documents for various source categories of NO_X with their corresponding EPA publication numbers. We also, in section 10 of our proposal (67 FR 48095), included a list of the affected NO_X point source categories, maximum rated capacities, and their relevant emission factors.

The LDEQ developed and promulgated the NO_X RACT regulation with reference to such EPA guidance (*see* Louisiana's Comment Summary-Response & Concise Statement for AQ215, submitted to EPA December 2001). Although EPA has historically recommended source/category-wide presumptive RACT limits, no particular emissions control or emissions limitation automatically qualifies as RACT. Nor is there one control measure or emissions limitation that is RACT for a particular category of sources. The level of reductions required to determine RACT for a particular source depend on a number of factors, including an area's design value, a source's general process and operating procedures as well as the raw materials it uses, the net environmental impact of the control measures and economic feasibility. The level of reductions required by this rule were determined using photochemical grid modeling, an analysis of available technology and resources, and comparison to control measures instituted in other areas (*see* EPA's TSD for this action and Louisiana's Comment Summary-Response & Concise Statement for AQ215, Comments 8–32). Based on the results of the modeling and an analysis of the economic and technologically feasible controls, EPA believes this regulation meets the Act's RACT requirements.

Although the commenter alleges that the NO_X rule violates section 172(c) for not meeting minimum RACT, the TELC fails to provide any specific information, an individual emission factor for an affected source category, or a technological and economical evaluation/comparison to substantiate its position.

We believe that proposed NO_X control measures are economically and technologically feasible, do strengthen the existing Louisiana SIP, assist to bring the BR area into attainment with the ozone standards, and constitute RACT. For these reasons we disagree with the comment.

Comment #17: The TELC commented that the NO_X rule violates section 172(c)(1) of the Act because it lacks requirements for a ''Reasonably Available Control Mechanism.''

Response to Comment #17: We interpret the comment as a reference to section 172(c)(1)'s requirement for ''Reasonably Available Control Measures'' (RACM). We disagree with the commenter. This rule addresses NO_X RACT. As stated previously, EPA believes the emissions limitations contained in Louisiana's Chapter 22 NO_X Rule meet the requirements for RACT. Louisiana has conducted a RACM analysis for its SIP, which is the subject of a separate rulemaking. *See* 67 FR 50391 (August 2, 2002). The EPA will address the State's RACM analysis in that rulemaking. The EPA has previously provided guidance interpreting the RACM requirements of 172(c)(1) in the General Preamble. *See* 57 FR 13498, 13560 (April 16, 1992). In the General Preamble, EPA indicated its interpretation of section 172(c)(1), under the 1990 Amendments, as imposing a duty on States to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the particular nonattainment area. The EPA also retained its pre-1990 interpretation of the RACM provisions, stating that we would not consider it reasonable to require implementation of measures that might in fact be available for implementation in the nonattainment area, but could not be implemented on a schedule that would advance the date for attainment in the area. The EPA does not believe a RACM analysis is necessary to approve this rule. Therefore, EPA finds no basis in this comment to disapprove or revise the NO_X rule.

Comment #18: The TELC commented that in its July 23, 2002 proposed approval action (67 FR 48095), EPA

proposes to approve Louisiana's NO_X RACT rule based on an agreement ''that the State of Louisiana will be implementing RACT for point source categories.'' The TELC states that this agreement does not provide for the implementation of RACT as required by the Act.

Response to comment #18: The EPA does not know to what ''agreement'' the commenter is referring. As explained in Comment and Response #16, above, EPA is approving this rule because it meets the requirements of sections 182(b)(2) and 182(f) of the Act. We agree that in our July 23, 2002, EPA stated, ''By this approval, we are also agreeing that the State of Louisiana will be implementing RACT for point sources of NO_X in the BR area and its Region of Influence.'' We intended that statement to mean that, upon EPA approval, Louisiana's regulations would meet the RACT requirements of the Act. For these reasons, we find nothing in this comment to preclude our approval of this rule.

Our response to written comments concerning Action Number 2 (67 FR 49647) are as follows:

Comment #19: The LDEQ expressed its support for our July 31, 2002 proposal (67 FR 49647).

Response to comment #19: We appreciate the commenter's support of our July 31, 2002 proposal (67 FR 49647) and have considered these comments in making our final determination.

Comment #20: The TELC commented that Action Number 2 can not be part of the SIP because it has not been properly promulgated by the State and that EPA's consideration of the NO_X rule in parallel proceedings is an improper procedure.

Response to comment #20: As stated in our July 31, 2002, proposal (67 FR 49647), the Governor of Louisiana submitted a letter, dated April 8, 2002, to us requesting that we propose approval of their rule revision concerning RACT for lean burn engines through parallel processing. We proposed approval of the April 8, 2002, SIP revision at the same time as the State was accepting comments and finalizing its rule revision. The method of simultaneously processing and approving a State's proposed rule revision is referred to as parallel processing. Parallel processing allows a State to submit a SIP revision prior to actual adoption by the State and provides an opportunity for the State to consider EPA comments prior to submission of final SIP revision for final EPA review and action. The 40 CFR Part 51, Appendix V provides for this method of regulatory review and SIP processing. The EPA explained its reasoning when promulgating these procedures. *See* also, 55 FR 5824 (February 16, 1990). As stated in our July 31, 2002, proposal (67 FR 49647), the State and EPA properly followed the parallel processing requirements of 40 CFR Part 51, Appendix V. Since the criteria set forth in 40 CFR Part 51, Appendix V have been promulgated long since, the procedural rules that allow this means of considering SIP revisions of Action Number 2 can no longer be challenged. Finally, the State's final rule revision is not significantly different from its April 8, 2002 submission (proposed rule); therefore, we will not be re-proposing our action.

The State's submittal, the Governor's letter, and our proposal to approve this particular SIP revision were made available for public review and comment, in accordance with the applicable rules, regulations, and procedures. We disagree with the commenter's position, and believe our approval of this SIP revision will strengthen Louisiana's SIP and will further safeguard the health and welfare of the public in the affected areas.

Comment #21: The LAMOGA commented that EPA's requirement to amend the capacity threshold for the lean burn engines was a last minute action.

Response to comment #21: Contrary to the LAMOGA's statement, EPA's recommendation to amend the capacity for the lean burn engines was not a last minute decision or action. In a letter to the LDEQ dated December 3, 2001, on page 11, EPA wrote: ''we are concerned that major sources of NO_X may not be controlled if the exemption level for lean burn engines in the NO_X rule remains at 1500 horsepower (hp)... Louisiana should lower the applicability threshold for lean burn engines to insure all major sources institute RACT at a minimum as required by the Clean Air Act * * * '' In a letter to the LDEQ, dated January 24, 2002, EPA expressed its concern over this issue again by stating ''we are concerned that all major sources of NO_X may not be controlled sufficiently to meet the statutory RACT requirement, if the exemption level for the lean burn engines is 1500 Hp.'' The LDEQ has since lowered the threshold limit for the lean burn engines and in a May 1, 2002, letter to the LDEQ we expressed our support for the State's action in this regard. The December 3, 2001, January 24, 2002, and May 1, 2002, letters are part of the docket and have been available to the public since the commencement of this rulemaking. Based on these three letters of record, we believe that there has been ample notice and opportunity for comment regarding EPA's position, and therefore disagree with the commenter's position in this regard.

Comment #22: The LAMOGA expressed its concern that the LDEQ's request to process the AQ224 rule through parallel processing was driven by mandated deadlines; otherwise, RACT would not have been triggered for lean burn engines of 320 Hp or above.

Response to comment #22: We refer to our response to comment #20 with respect to LAMOGA's comments regarding parallel processing. LAMOGA's comments indicate that the organization has been actively involved in the regulatory development arena of the BR area SIP and state's Ozone Task Force.

Section 182(b)(2) of the Act requires that a state submit a revision to its SIP that includes provisions requiring implementation of RACT under section 172(c)(1). Section 172(c)(1) of the Act requires that SIP provisions provide for implementation of RACT, at a minimum, as expeditiously as practicable to attain the NAAQS. In addition, section 182(f) of the Act states that SIP provisions required for major sources of VOCs also apply to the major sources of NO_X. The BR area was designated a serious ozone nonattainment area (40 CFR 81.319). According to section 182(c) of the Act, a major source in a serious nonattainment area is a source that has a potential to emit 50 tpy or more of NO_X. Lean burn engines of 320 hp and above have the potential to emit 50 tpy or more of NO_X. *See* Pages 9 and ten of our TSD for this rulemaking. The 40 CFR Part 51, Appendix V provides for a state to request EPA to process revisions to its SIP as the state is accepting comments and finalizing its rule revision. We believe that the above listed statutory requirements of the Act are the driving forces for adoption of AQ224. While we appreciate the commenter's statement for not wanting to jeopardize approval of the BR area ozone attainment demonstration SIP, we also note that the major source threshold for a stationary source in a severe ozone nonattainment area is 25 tpy. The 25 tpy cut-off could potentially subject additional lean burn engines in the BR area to RACT requirements if the current measures are not adopted or implemented accordingly. The proposed lean burn engine requirements can be met with combustion modifications and without utilizing post combustion control technology measures. The Chapter 22 NO_X rule provides for operational flexibility through facility-wide averaging provisions of which a

source may want to take advantage. *See* subsection E in Chapter 22.

Comment #23: The LAMOGA commented that LDEQ has not adequately demonstrated RACT for lean burn engines between 320 and 1500 Hp.

Response to comment #23: We disagree. The NO_X emission factor for lean burn engines of 320 Hp or higher in size, within the BR area, is set forth at 4 grams/Hp-Hour. *See* Subsection D.1 in Chapter 22. The EPA has received documentation from an affected facility in the BR area that this level of control for such engines can be easily and cost-effectively achieved. This documentation is part of the docket and available to the public for review. The NO_X emission factor for lean burn engines as set forth in Chapter 22 rule is consistent with the findings of the report titled ''Stationary Reciprocating Internal Combustion Engines, Updated Information on NO_X Emissions and Control Techniques'' dated September 1, 2000. *See* Pages 4–4 and 4–12 of this report. You can find this report at: *http://www.epa.gov/ttnnaaqs/ozone/rto/fip/data/rfic_engine.pdf.*

The commenter's claim that the controls are not cost-effective, and consequently not RACT, is wrong for a number of reasons. First, it appears that the commenter has selectively chosen the hours of operation so that its measure of cost effectiveness is biased. Second, in any event, as in any technology-based scheme, the focus must be first on emission reduction, not on cost. *See e.g. Husgvarna AB* v. *EPA,* 254 F 3d 195,200 (D.C. Cir. 2001)(cost considerations are subordinate to emission reduction goals of technology-based requirement); *Lignite Energy Council* v. *EPA,* 198 F 3d 930, 933 (D.C. Cir. 1999)(emission reductions resulting from technology based scheme must be sustained unless economic or environmental costs are ''exorbitant''). As stated previously, an affected facility in the BR area has submitted documentation showing that it, as well as other affected facilities, are capable of achieving emissions levels well below the required limit for lean burn engines. This documentation corroborates the State's and EPA's similar conclusions. Therefore, the economic or environmental costs to the commenter can not be considered exorbitant. Furthermore, it is entirely unreasonable for an uncontrolled major source to selectively choose a desirable number of ''hours per year'' to arrive at a higher value for cost per ton of NO_X in its economic analysis, declare control requirements to be economically infeasible based on this faulty accounting, and thus continue operation absent of any control measures. Based on foregoing information, we believe that Chapter 22 requirement for lean burn engines is technologically and economically feasible, and consider the State's RACT limits to be reasonable.

Comment #24: The LAMOGA suggests that LDEQ may consider, at a later date, to amend (relax) the NO_X emission limits for lean burn engines.

Response to comment #24: While attaining the ozone NAAQS in BR area is a formidable challenge for both the regulated community and regulating entities, maintaining the standard could prove to be an even more challenging task. The EPA notes that any future revisions to the SIP in the BR area would have to meet the requirements of the Act, including section 110, and must continue to demonstrate attainment.

This concludes our responses to the received written comments concerning Actions Number 1 and 2.

6. What is Definition of a Major Source for NO_X?

The BR area was designated as a serious ozone nonattainment area (40 CFR 81.319). According to section 182(c) of the Act, a major source in a serious nonattainment area is a source that emits, when uncontrolled, 50 tpy or more of NO_X. Therefore, the major source size for NO_X within these 9 parishes is 50 tpy or more, when uncontrolled.

7. What is the History of NO_X RACT Rules for Point Sources in the BR Area?

Prior to our proposed rulemaking actions (67 FR 48095 and 67 FR 49647) the Louisiana's approved SIP did not a contain NO_X RACT rule for point sources operating in these 9 parishes. We believe that implementation of today's rule revisions will assist in bringing the BR area into attainment with the federal 1-hour ozone standard, and will strengthen the existing Louisiana SIP.

8. What are the NO_X Emissions Factors for Point Sources of NO_X in the BR Area?

The following Table contains a summary of the affected NO_X point source categories, maximum rated capacities, and their relevant emission factors based on the February 27, and July 25, 2002, SIP submittals. *See* LAC 33:III:2201, section D(1). Table I—Affected Categories of NO_X, Maximum Rated Capacities, and Emission Factors in the BR area

Category	Maximum Rated Capacity	NO_X Emission Factor
Electric Power Generating System Boilers:		
Coal-fire	≥80 MMBtu/Hour	0.21 lb/MMBtu
Number 6 Fuel Oil-fired	≥80 MMBtu/Hour	0.18 lb/MMBtu
All Others (gaseous or liquid)	≥80 MMBtu/Hour	0.10 lb/MMBtu
Industrial Boilers	≥80 MMBtu/Hour	0.10 lb/MMBtu
Process Heater/Furnaces:		
Ammonia Reformers	≥80 MMBtu/Hour	0.23lb/MMBtu
All Others	≥80 MMBtu/Hour	0.08 lb/MMBtu
Stationary Gas Turbines:		
Peaking Services, Fuel oil-fired	≥10 MW	0.30 lb/MMBtu
Peaking Services, Gas-fired	≥10 MW	0.20 lb/MMBtu
All others	≥10 MW	0.16 lb/MMBtu or 42 ppm @ 15% O2, dry basis
Stationary Internal Combustion Engines:		
Lean Burn (Region of Influence)	≥1500 Hp	4 g/Hp-Hour
Lean Burn (BR Nonattainment area)	≥320 Hp	4 g/Hp-Hour
Rich Burn	≥300 Hp	2 g/Hp-Hour

We believe that the above NO_X emission factors for point sources of NO_X in the BR area and Region of Influence will assist in bringing the BR area into attainment with the federal 1-hour ozone standard, and will strengthen the existing Louisiana SIP. *See* section II, A.5, 67 FR 50391 (August 2, 2002).

By this approval we are agreeing that the State of Louisiana will be implementing RACT for point source categories listed in Table I of this document.

9. What is the Compliance Schedule for Point Sources of NO_X in the BR Area?

The compliance date for point sources of NO_X in the BR area is as expeditiously as possible, but no later than May 1, 2005. *See* LAC 33:III:2201, sections J(1) and (2). We believe that the compliance schedule for point sources of NO_X in the BR area will assist in bringing the BR area into attainment with the federal 1-hour ozone standard, and will strengthen the existing Louisiana SIP.

10. What areas in Louisiana will today's rulemaking affect?

The following table contains a list of Parishes affected by today's rulemaking.

TABLE II—RULE NUMBER AND AFFECTED PARISHES OF LOUISIANA

Rule No.	Affected parishes
LAC 33:III:2201 (AQ215) provisions.	Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, and West Feliciana
LAC 33:III:2201 (AQ224) provisions.	Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge

If you are in one of these Louisiana parishes, you should refer to the Louisiana NO_X rules to determine if and how today's action will affect you.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 26, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Nitrogen oxides, Nonattainment, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 20, 2002.

Lawrence Starfield,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart T—Louisiana

2. In § 52.970 the table in paragraph (c) is amended by:

a. adding a new centered heading, immediately after ''Table 8'' in Chapter 21 and before Chapter 23, entitled ''Chapter 22—Control of Emissions of Nitrogen Oxides (NO_X)''

b. adding entries for section 2201, and subsections A, B, C, D, E, F, G, H, I, and J under new Chapter 22.

The additions read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP

State citation	Title/subject	State approval date	EPA date approval	Comments
*	*	*	*	*
Chapter 21—Control of Emissions of Organic Compounds				
*	*	*	*	*
Table 8	Untitled [List of Synthetic Organic Chemicals].	Dec. 1987, LR13:741	05/05/94, 59 FR 2311666	Ref 52.999(c)(49) and (60). Table approved at (c)(49) included CAS numbers. Table approved at (c)(60) did not include CAS numbers.
Chapter 22—Control of Emissions of Nitrogen Oxides (NO_X)				
Section 2201—Affected Facilities in the Baton Rouge Nonattainment Area and the Region of Influence				
Subsection A	Applicability	Feb. 27, 2002 July 25, 2002.	September 27, 2002 and FR cite	
Subsection B	Definitions	Feb. 27, 2002 July 25, 2002.	September 27, 2002 and FR cite	
Subsection C	Exemptions	Feb. 27, 2002 July 25, 2002.	September 27, 2002 and FR cite	
Subsection D	Emission Factors	Feb. 27, 2002 July 25, 2002.	September 27, 2002 and FR cite	Cutoff size for lean burn engines lowered to 320 Hp on July 25, 2002, for the ozone nonattainment parishes. Cutoff size for lean burn engines in the Region of Influence is 1500 Hp.
Subsection E	Alternative Plans	Feb. 27, 2002 July 25, 2002.	September 27, 2002 and FR cite	
Subsection F	Permits	Feb. 27, 2002 July 25, 2002.	September 27, 2002 and FR cite	
Subsection G	Initial Demonstration of Compliance.	Feb. 27, 2002 July 25, 2002.	September 27, 2002 and FR cite	
Subsection H	Continuous Demonstration of Compliance.	Feb. 27, 2002 July 25, 2002.	September 27, 2002 and FR cite	
Subsection I	Notification, Record-keeping, and Reporting Requirements.	Feb. 27, 2002 July 25, 2002.	September 27, 2002 and FR cite	
Subsection J	Effective Dates	Feb. 27, 2002 July 25, 2002.	September 27, 2002 and FR cite	
Chapter 23—Control of Emissions From Specific Industries				
*	*	*	*	*

[FR Doc. 02–24636 Filed 9–26–02; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0225; FRL–7200–7]

Pyraclostrobin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of pyraclostrobin (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester and its desmethoxy metabolite methyl 2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl carbamate, expressed as parent compound, in or on almond, hulls and various other fruits and vegetables and agricultural products, and combined residues of pyraclostrobin, carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester and its metabolites convertible to 1-(4-chlorophenyl)-1H-pyrazol-3-ol and 1-(4-chloro-2-hydroxyphenyl)-1H-pyrazol-3-ol, expressed as parent compound, in or on cattle, fat and various other animal products. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective September 27, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0225, must be received on or before November 26, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0225 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740; e-mail address: *giles-parker.cynthia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet home page at *http://www.epa.gov/*. To access this document, on the home page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0225. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of May 23, 2001 (66 FR 28470) (FRL–6780–7), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 0F6139) by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709–3528. This notice included a summary of the petition prepared by BASF Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.582 be amended by establishing tolerances for combined residues of the fungicide pyraclostrobin, (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its desmethoxy metabolite (methyl 2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl carbamate), expressed as parent compound, in or on almond, hulls at 1.6 parts per million (ppm); banana at 0.04 ppm; barley, grain at 0.4 ppm; barley, hay at 25 ppm; barley, straw at 6.0 ppm; bean, dry at 0.3 ppm; beet, sugar, dried pulp at 1.0 ppm; beet, sugar, roots at 0.2 ppm; beet, sugar, tops at 8.0 ppm; berry, group at 1.3 ppm; citrus, dried pulp at 5.5 ppm; citrus, oil at 4.0 ppm; fruit, citrus, group at 0.7 ppm; fruit, stone, group at 0.9 ppm; grain, aspirated fractions at 2.5 ppm; grape at 2.0 ppm; grape, raisin at 7.0 ppm; grass, forage at 10 ppm; grass, hay at 4.5 ppm; grass, seed screenings at 27 ppm; grass, straw at 14 ppm; nut, tree, group at 0.04 ppm; peanut, nutmeat at 0.05 ppm; peanut, refined oil at 0.1 ppm; pistachio at 0.7 ppm; radish, tops at 16 ppm; rye, grain at 0.04 ppm; rye, straw at 0.5 ppm; strawberry at 0.4 ppm; vegetable, bulb, group at 0.9 ppm; vegetable, cucurbit, group at 0.5 ppm; vegetable, fruiting, group at 1.4 ppm; vegetable, root, except sugar beet, subgroup at 0.4 ppm; vegetable, tuberous and corm, subgroup at 0.04 ppm; wheat, grain at 0.2 ppm; wheat, hay at 6.0 ppm; and wheat, straw] at 8.5 ppm, and combined residues of pyraclostrobin, (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its metabolites convertible to 1-(4-chlorophenyl)-1H-pyrazol-3-ol and 1-(4-chloro-2-hydroxyphenyl)-1H-pyrazol-3-ol, expressed as parent compound, in or on cattle, fat at 0.1 ppm; cattle, liver at 1.5 ppm; cattle, meat at 0.1 ppm; cattle, meat byproducts, except liver at 0.2 ppm; goat, fat at 0.1 ppm; goat, liver at 1.5 ppm; goat, meat at 0.1 ppm; goat, meat byproducts, except liver at 0.2 ppm; hog, fat at 0.1 ppm; hog, liver at 1.5 ppm; hog, meat at 0.1 ppm; hog, meat byproducts, except liver at 0.2 ppm; horse, fat at 0.1 ppm; horse, liver at 1.5 ppm; horse, meat at 0.1 ppm; horse, meat byproducts, except liver at 0.2 ppm; milk at 0.1 ppm; sheep, fat at 0.1 ppm; sheep, liver at 1.5 ppm; sheep, meat at 0.1 ppm; and sheep, meat byproducts, except liver at 0.2 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable

certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the establishment of tolerances for combined residues of pyraclostrobin (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its desmethoxy metabolite (methyl 2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl carbamate), expressed as parent compound in or on almond, hulls at 1.6 ppm; banana at 0.04 ppm; barley, grain at 0.4 ppm; barley, hay at 25 ppm; barley, straw at 6.0 ppm; bean, dry at 0.3 ppm; beet, sugar, dried pulp at 1.0 ppm; beet, sugar, roots at 0.2 ppm; beet, sugar, tops at 8.0 ppm; berry, group at 1.3 ppm; citrus, dried pulp at 5.5 ppm; citrus, oil at 4.0 ppm; fruit, citrus, group at 0.7 ppm; fruit, stone, group at 0.9 ppm; grain, aspirated fractions at 2.5 ppm; grape at 2.0 ppm; grape, raisin at 7.0 ppm; grass, forage at 10 ppm; grass, hay at 4.5 ppm; grass, seed screenings at 27 ppm; grass, straw at 14 ppm; nut, tree, group at 0.04 ppm; peanut, nutmeat at 0.05 ppm; peanut, refined oil at 0.1 ppm; pistachio at 0.7 ppm; radish, tops at 16 ppm; rye, grain at 0.04 ppm; rye, straw at 0.5 ppm; strawberry at 0.4 ppm; vegetable, bulb, group at 0.9 ppm; vegetable, cucurbit, group at 0.5 ppm; vegetable, fruiting, group at 1.4 ppm; vegetable, root, except sugar beet, subgroup at 0.4 ppm; vegetable, tuberous and corm, subgroup at 0.04 ppm; wheat, grain at 0.2 ppm; wheat, hay at 6.0 ppm; and wheat, straw] at 8.5 ppm, and combined residues of pyraclostrobin, (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its metabolites convertible to 1-(4-chlorophenyl)-1H-pyrazol-3-ol and 1-(4-chloro-2-hydroxyphenyl)-1H-pyrazol-3-ol, expressed as parent compound], in or on [cattle, fat at 0.1 ppm; cattle, liver at 1.5 ppm; cattle, meat at 0.1 ppm; cattle, meat byproducts, except liver at 0.2 ppm; goat, fat at 0.1 ppm; goat, liver at 1.5 ppm; goat, meat at 0.1 ppm; goat, meat byproducts, except liver at 0.2 ppm; hog, fat at 0.1 ppm; hog, liver at 1.5 ppm; hog, meat at 0.1 ppm; hog, meat byproducts, except liver at 0.2 ppm; horse, fat at 0.1 ppm; horse, liver at 1.5 ppm; horse, meat at 0.1 ppm; horse, meat byproducts, except liver at 0.2 ppm; milk at 0.1 ppm; sheep, fat at 0.1 ppm; sheep, liver at 1.5 ppm; sheep, meat at 0.1 ppm; and sheep, meat byproducts, except liver at 0.2 ppm.]. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The acute toxicity of pyraclostrobin is presented in the following table 1:

TABLE 1.—ACUTE TOXICITY OF PYRACLOSTROBIN

Guideline Number	Study Type	Results/Toxicity Catergory
870.1100	Acute oral toxicity	LD_{50} = > 5,000 milligrams per kilogram (mg/kg) Toxicity category = IV
870.1200	Acute dermal toxicity	LD_{50} = > 2,000 mg/kg; toxicity category = III
870.1300	Acute inhalation toxicity	LC_{50} = < 0.31 milligrams per liter (mg/L) LC_{50} = < 1.07 mg/L; toxicity category = II
870.2400	Acute eye irritation	Minimal eye irritation; toxicity category = III
870.2500	Acute dermal irritation	Moderate skin irritation; toxicity ccategory = III
870.2600	Skin sensitization	Not a sensitizer

The subchronic and chronic toxic effects caused by pyraclostrobin, as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed, are discussed in the following Table 2.

TABLE 2.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY OF PYRACLOSTROBIN

Guideline Number	Study Type	Study Classification; Dosing	Results
Number guideline number	28–day feeding study - rat	Acceptable/nonguideline; 0, 20, 100, 500, or 1,500 ppm (0, 1.8, 9.0, 42.3, or 120.2 mg/kg/day in males; 0, 2.0, 9.6, 46.6, or 126.3 mg/kg/day in females	The LOAEL = 500 ppm for both males and females, based on changes in hematology parameters, increased absolute and relative spleen weight, histopathology in spleen and liver, and increased duodenal mucosal hyperplasia The NOAEL = 100 ppm for both sexes
870.3100	13–week feeding study - rat	Acceptable/guideline; 0, 50, 150, 500, 1,000, or 1,500 ppm (0, 3.5, 10.7, 34.7, 68.8, or 105.8 mg/kg/day for males; 0, 4.2, 12.6, 40.8, 79.7, or 118.9 mg/kg/day for females)	The LOAEL for both sexes = 500 ppm, based on reduced body weight and body weight gain in males, reduced food intake in both sexes, increased relative liver weight and spleen weight in females, histopathology of duodenum and liver in males, and histopathology of spleen in both sexes The NOAEL = 150 ppm for both sexes
870.3150	13–week feeding study - dog	Acceptable/guideline; 0, 100, 200, and 450 ppm (0, 2.8, 5.8, and 12.9 mg/kg/day for males; 0, 3.0, 6.2, and 13.6 mg/kg/day for females)	The LOAEL for both males and females = 450 ppm, based on an increased incidence of diarrhea, clinical chemistry changes, and mucosal hypertrophy of the duodenum in both sexes; and body weight loss, decreased food intake, and decreased food efficiency in females The NOAEL = 200 ppm for both sexes
870.3150	13–week feeding study - mouse	Acceptable/guideline; 0, 50, 150, 500, 1,000, or 1,500 ppm (0, 9.2, 30.4, 119.4, 274.4, or 475.5 mg/kg/day for males; 0, 12.9, 40.4, 162.0, 374.1, or 634.8 mg/kg/day for females)	The LOAEL = 150 ppm for both sexes, based on reduced body weight and body weight gain in males; changes in clinical chemistry (increased urea and decreased triglyceride) in both sexes; and increased incidences of lymph node apoptosis, thymus atrophy, and ulceration/erosionin the glandular stomach in females The NOAEL = 50 ppm for both sexes
870.3200	28–day dermal toxicity - rat	Unacceptable/guideline; 0, 40, 100, or 250 mg/kg for 5 days/week	The LOAEL was > 250 mg/kg The NOAEL = 250 mg/kg The study is unacceptable because a higher dose could have been tolerated and the limit dose is 1,000 mg/kg/day
870.3700	Prenatal developmental toxicity study in rodents - rat	Acceptable/guideline; 0, 10, 25 or 50 mg/kg/day	The Maternal LOAEL = 25 mg/kg/day, based on reduced body weight, reduced body weight gain, reduced food intake, and reduced food efficiency Maternal NOAEL = 10 mg/kg/day The Developmental LOAEL = 50 mg/kg/day, based on increased incidences of dilated renal pelvis and cervical ribs with no cartilage The Developmental NOAEL = 25 mg/kg/day

TABLE 2.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY OF PYRACLOSTROBIN—Continued

Guideline Number	Study Type	Study Classification; Dosing	Results
870.3700	Prenatal developmental toxicity study in nonrodents - rabbit	Acceptable/guideline; 0, 1, 3, 5, 10, or 20 mg/kg/day	The maternal LOAEL = 10 mg/kg/day, based on reduced body weight gain, reduced food consumption, and reduced food efficiency The maternal NOAEL = 5 mg/kg/day The developmental LOAEL = 10 mg/kg/day, based on increased resorptions/litter, increased post- implantation loss, and dams with total resorptions The Developmental NOAEL was 5 mg/kg/day
870.3800	2-generation reproduction and fertility effects - rat	Unacceptable/guideline; 0, 25, 75, or 300 ppm (0 to 29.0 mg/kg/day for F0 males; 0 to 30.4 mg/kg/day F0 females; 0 to 35.0 mg/kg/day for F1 males; 0 to 36.0 mg/kg/day for F1 females)	The parental systemic, reproductive, and offspring LOAELs were all > 300 ppmThe parental systemic, reproductive, and offspring NOAELs all = 300 ppm. The study is unacceptable because higher doses could be tolerated
870.4100	1–year feeding study - dog	Acceptable/guideline; 0, 100, 200, or 400 ppm (0, 2.7, 5.4, or 10.8 mg/kg/day in males; 0, 2.7, 5.4, or 11.2 mg/kg/day in females)	The LOAEL = 400 ppm for both sexes, based on increased diarrhea in both sexes, clinical chemistry changes in both sexes, decreased body weight gain in females, and decreased food intake and food efficiency in females The NOAEL = 200 ppm for both sexes
870.4200	18–month carcinogenicity - mouse	Unacceptable/guideline; 0, 10, 30, or 120 ppm in males (0, 1.4, 4.1, and 17.2 mg/kg/day); 0, 10, 30, 120, or 180 ppm in females (0, 1.6, 4.8, 20.5, or 32.8 mg/kg/day); 97.09% pure a.i.	The LOAEL was > 120 ppm for males and > 180 ppm for females, because no clearly and significantly dose-related adverse effects were observed. There were no increased incidences of tumors; under the conditions of the study, there was no evidence of carcinogenic potential. However, the study is considered to be unacceptable because the maximum dosing levels were too low to satisfy the requirements for a carcinogenicity study in mice

TABLE 2.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY OF PYRACLOSTROBIN—Continued

Guideline Number	Study Type	Study Classification; Dosing	Results
870.4200	24–Month carcinogenicity - rat	Acceptable/guideline; 0, 25, 75, or 200 ppm (0, 1.2, 3.4, 9.2 mg/kg/day for males and 0, 1.5, 4.7, and 12.6 mg/kg/day for females)	The LOAEL = 200 ppm for both males and females, based on decreases in body weight and body weight gains in males and females; increased incidence of kidney tubular casts and atrophy in males and females; and increased incidence of necrosis of the liver, gross and microscopic evidence of erosion/ulceration of the glandular stomach, and increased incidence of acanthosis and ulcers of the forestomach in males. The NOAEL = 75 ppm for both males and females. As to carcinogenicity, histiocytic sarcoma and lymphoma of the hemolymphoreticular system was observed in males at 25, 75, and 200 ppm, as well as in controls. There was an increase in incidence of mammary gland adenocarcinoma in females at 200 ppm, compared to controls. Testicular leydig cell tumors were observed in all male groups, but had a slightly higher incidence in each treated group than in controls. Under the conditions of this study there is evidence that pyraclostrobin may be carcinogenic
870.4100	24–Month chronic toxicity - rats	Unacceptable/guideline; 0, 25, 75, or 200 ppm (0, 1.1, 3.4, or 9.0 mg/kg/day in males; 0, 1.5, 4.6, or 12.3 mg/kg/day in females)	The LOAEL was > 200 ppm The NOAEL = 200 ppm. The study is unacceptable because a higher dose could have been tolerated
870.5100	Gene mutation: Bacterial reverse mutation	Acceptable/guideline; 0 to 5,000 micrograms (µg)/plate tested up to precipitating concentrations	Negative. There was no evidence of treatment-induced mutant colonies above background levels in any assay, including in the presence or absence of an Aroclor 1,254-stimulated rat liver metabolic activation system or using the preincubation test
870.5300	Other genotoxic effect mammalian cells in culture gene mutation assay	Acceptable/guideline; (see test summary in results)	Negative. Chinese hamster ovary (CHO) cells were cultured *in vitro.* They were exposed to pyraclostrobin at concentrations of 0.625, 1.25, 2.5, 5.0, 10.0, and 20.0 µg/ml in the presence and absence of metabolic activation; concentrations of 3, 4, 5, 6, 7, and 8 µg/mL in the absence of metabolic activation; and concentrations of 1.25, 2.5, 5.0, 10.0, and 20.0 µg/mL in the presence and absence of metabolic activation. There was no evidence of induced mutant colonies over background

TABLE 2.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY OF PYRACLOSTROBIN—Continued

Guideline Number	Study Type	Study Classification; Dosing	Results
870.5375	*In vitro* mammalian chromosome aberrations	Acceptable/guideline; (see test summary in results)	Negative. Chinese hamster V79 cell cultures were tested at concentrations of 0, 6.25, 12.5, or 25.0 micrograms per milliliter (μg/mL) in the presence and absence of an Aroclor 1,254-stimulated rat liver metabolic activation system; at 0, 3.125, 6.25, or 12.5 μg/mL in the presence of metabolic activation; and at 0, 0.005, 0.010, 0.050, or 0.100 μg/mL in the absence of metabolic activation. There was no evidence of an increase in the number of structural or numerical chromosomal aberrations induced over background
870.5395	*In vivo* mammalian cytogenetics	Acceptable/guideline; 0, 75, 150, or 300 mg/kg body weight	Negative. Mouse bone marrow micronucleus was assayed *in vitro.* There was no significant increase in the frequency of micronucleated polychromatic erythrocyte in the bone marrow at any dose level tested, at any time after treatment. It is therefore concluded that pyraclostrobin did not induce a clastogenic effect in either sex at any sacrifice time
870.5550	Unscheduled DNA syntheses	Acceptable/guideline; (see test summary in results)	Negative. Primary rat hepatocyte cultures were exposed to pyraclostrobin at up to cytotoxic concentrations: in one test at concentrations of 0.01, 0.03, 0.1, 0.3, or 1.0 μg/mL and in a second test at 0.004, 0.02, and 0.5 μg/mL. There was no evidence that pyraclostrobin induced unscheduled DNA synthesis, as determined by net nuclear silver grain counts
870.6100	Acute oral neurotoxicity - rat	Acceptable/guideline; single doses of 0, 100, 300, or 1,000 mg/kg before sacrifice after 14 days	The Systemic Toxicity LOAEL for males was 1,000 mg/kg body weight, based on 33% decreased body weight on days 0-7 (no similar effect was detected on days 0-14). The systemic toxicity NOAEL for males was 300 mg/kg body weight. The systemic toxicity LOAEL for females could not be determined since there were no adverse, treatment-related effects. Thus, the systemic toxicity NOAEL for females was 1,000 mg/kg body weight. The neurotoxicity LOAEL could not be determined because there were no treatment-related neurotoxic effects at any dose level tested. The neurotoxicity NOAEL was 1,000 mg/kg body weight

TABLE 2.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY OF PYRACLOSTROBIN—Continued

Guideline Number	Study Type	Study Classification; Dosing	Results
870.6200	Subchronic neurotoxicity - rats	Acceptable/guideline; 0, 50, 250, or 750 (males)/1,500 (females) ppm (0, 3.5, 16.9, or 49.9 mg/kg/day for males and 0, 4.0, 20.4, or 111.9 mg/kg/day for females) for 3 months	Systemic toxicity: The LOAEL was 750 ppm for males and 1,500 ppm for females, based (for both sexes) on decreased body weight gain, decreased food intake, and decreased food efficiency. The NOAEL was 250 ppm for both males and females. Neurotoxicity: The LOAEL could not be determined because there were no treatment-related neurotoxic effects noted at any dose level. Therefore, the NOAEL was 750 ppm for males and 1,500 ppm for females
870.7600	Dermal penetration - rats	Unacceptable/guideline; 0.375 mg/cm^2	The absorption rate could not be accurately determined because at 8 hours after dermal exposure initiation 76.4% of the administered dose remained on the dressing and only 23.6% was available for absorption. However, a conservative upper bound dermal absorption rate estimate of 14% can be calculated from the study results

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences. That is the case in the pyraclostrobin risk assessment.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences), the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 X 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for pyraclostrobin used for human risk assessment is shown in the following Table 3:

TABLE 3.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR PYRACLOSTROBIN FOR USE IN HUMAN RISK ASSESSMENT*

Exposure Scenario	Dose used in Risk Assessment UF	FQPA SF and Endpoint for Risk Assessment	Study; Toxicological Endpoint
Acute dietary (general population)	NOAEL = 300 mg/kg/day UF = 100 Acute RfD = 3 mg/kg/day	Acute RfD = 3 mg/kg/day FQPA SF = 1X aPAD = 3 mg/kg/day	Rat acute oral neurotoxicity; the systemic toxicity NOAEL of 300 mg/kg based on decreased body weight gain in males at 1,000 mg/kg (the LOAEL)

TABLE 3.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR PYRACLOSTROBIN FOR USE IN HUMAN RISK ASSESSMENT*—Continued

Exposure Scenario	Dose used in Risk Assessment UF	FQPA SF and Endpoint for Risk Assessment	Study; Toxicological Endpoint
Acute dietary (females 13-50 years)	NOAEL = 5 mg/kg/day UF = 100 Acute RfD = 0.05 mg/kg/day	Acute RfD = 0.05 mg/kg/day FQPA SF = 3x aPAD = 0.017 mg/kg/day	Rabbit prenatal developmental toxicity; developmental toxicity findings of increased resorptions/litter and increased total resorptions (i.e., dams with complete litter loss) at 10 mg/kg/day (the LOAEL)
Chronic dietary	NOAEL = 3.4 mg/kg/day UF = 100 Chronic RfD = 0.034 mg/kg/day	Chronic RfD = 0.034 mg/kg/day FQPA SF = 3x cPAD = 0.011 mg/kg/day	Rat oral carcinogenicity; decreased body weight and body weight gain, kidney tubular casts and atrophy in both sexes, increased incidence of liver necrosis and erosion and ulceration of the glandular stomach and forestomach in males in addition to hemolymphoreticular tumors in males and mammary adenocarcinoma in females at 9.2 mg/kg/day (the LOAEL)

* The reference to the FQPA SF refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Tolerances are being established (40 CFR 180.582) for the residues of pyraclostrobin (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and one or more of its metabolites, expressed as parent compound], in or on a variety of raw agricultural commodities. These tolerances include almond, hulls at 1.6 ppm; Banana at 0.04 ppm; barley, grain at 0.4 ppm; barley, hay at 25 ppm; barley, straw at 6.0 ppm; bean, dry at 0.3 ppm; beet, sugar, dried pulp at 1.0 ppm; beet, sugar, roots at 0.2 ppm; beet, sugar, tops at 8.0 ppm; berry, group at 1.3 ppm; cattle, fat at 0.1 ppm; cattle, liver at 1.5 ppm; cattle, meat at 0.1 ppm; cattle, meat byproducts, except liver at 0.2 ppm; citrus, dried pulp at 5.5 ppm; citrus, oil at 4.0 ppm; fruit, citrus, group at 0.7 ppm; fruit, stone, group at 0.9 ppm; goat, fat at 0.1 ppm; goat, liver at 1.5 ppm; goat, meat at 0.1 ppm; goat, meat byproducts, except liver at 0.2 ppm; grain, aspirated fractions at 2.5 ppm; grape at 2.0 ppm; grape, raisin at 7.0 ppm; grass, forage at 10 ppm; grass, hay at 4.5 ppm; grass, seed screenings at 27 ppm; grass, straw at 14 ppm; hog, fat at 0.1 ppm; hog, liver at 1.5 ppm; hog, meat at 0.1 ppm; hog, meat byproducts, except liver at 0.2 ppm; horse, fat at 0.1 ppm; horse, liver at 1.5 ppm; horse, meat at 0.1 ppm; horse, meat byproducts, except liver at 0.2 ppm; milk at 0.1 ppm; nut, tree, group at 0.04 ppm; peanut, nutmeat at 0.05 ppm; peanut, refined oil at 0.1 ppm; pistachio at 0.7 ppm; radish, tops at 16 ppm; rye, grain at 0.04 ppm; rye, straw at 0.5 ppm; sheep, fat at 0.1 ppm; sheep, liver at 1.5 ppm; sheep, meat at 0.1 ppm; sheep, meat byproducts, except liver at 0.2 ppm; strawberry at 0.4 ppm; vegetable, bulb, group at 0.9 ppm; vegetable, cucurbit, group at 0.5 ppm; vegetable, fruiting, group at 1.4 ppm; vegetable, root, except sugar beet, subgroup at 0.4 ppm; vegetable, tuberous and corm, subgroup at 0.04 ppm; wheat, grain at 0.2 ppm; wheat, hay at 6.0 ppm; and wheat, straw at 8.5 ppm. Risk assessments were conducted by EPA to assess dietary exposures from pyraclostrobin (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester)] in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following determinations and assumptions were made for the acute exposure assessments: The aPAD for the subgroup females (13-50 years old) is much lower than the aPAD for the U.S. population group and the other subgroups assessed (see table 3 of this preamble) because of the much lower NOAEL used for the females (13-50 years old) subgroup and the 3x FQPA SF applied only to this subgroup, to protect against effects seen following *in utero* exposure in the developmental rabbit study. In these assessments percent crop treated data were used for a number of commodities but anticipated residues were not, so the assessments are considered to be partially refined and somewhat conservative. Concentration factors for processed commodities were also used. Refinements such as the use of anticipated residue estimates would potentially produce much lower estimates of dietary exposure. The results, at the 95th percentile, of the acute dietary exposure analysis were that the general U.S. population and all subgroups except females (13-50 years old) had dietary exposures that were < 1.0% of the aPAD. Females (13-50 years old) had a dietary exposure that was 41% of the aPAD.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the valuation DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The same cPAD was applicable to the general U.S. population and all subgroups in the chronic dietary exposure analysis. In this assessment PCT data were used for a number of commodities but anticipated residues were not, so the assessments are considered to be partially refined and somewhat conservative. Concentration factors for processed commodities were also used. Refinements such as the use of anticipated residue estimates would potentially produce much lower estimates of dietary exposure. The chronic pyraclostrobin dietary exposure analysis estimated the following exposures: (a) General U.S. population - 27% of the cPAD, (b) children (1-6 years old) - 74% of the cPAD, and (c) children

(7-12 years old) - 41% of the cPAD, infants (< 1–year old) - 31% of the cPAD. All other subgroups analyzed had exposures lower than that of the general U.S. population.

iii. *Cancer*. The database for carcinogenicity for pyraclostrobin is incomplete because the maximum dose levels for female mice and rats in the carcinogenicity studies are inadequate. The Agency considered a method of expressing potential cancer risk using a linear (Q1*) method based on mammary tumors in female rats, to put an upper limit on any possible cancer risk. However, statistical analyses of the tumor data from the combined results of the rat carcinogenicity and chronic toxicology studies showed neither a significant increasing trend nor a significant difference in the pair-wise comparison of the dosed groups with the controls. In Consultation with the Pest Management Regulatory Agency (PMRA), Canada, with whom pyraclostrobin has been jointly reviewed, it was decided that a MOE method would be more appropriate. The reason is that the genotoxicity data show that pyraclostrobin is not mutagenic and the highest dosage level in female rats can be interpreted as a NOAEL for cancer. The Agency therefore believes that it can make a reasonable certainty of no harm determination for carcinogenicity by calculating MOEs, based on the following endpoints: (a) NOAELs of 3.4 (for males) and 12.6 (for females) mg/kg/day from the 2–year carcinogenicity rat feeding study and (b) the NOAEL of 9.0 mg/kg/day from the 28–day rat feeding study.

The NOAEL of 3.4 mg/kg/day is based upon chronic toxicity findings at the LOAEL of 9.2 mg/kg/day, including decreased body weight and body weight gain, kidney tubular casts, and kidney atrophy in both sexes; increased incidence of liver necrosis, erosion/ulceration of the glandular stomach and forestomach, and hemolymphoreticular tumors in males; and mammary adenocarcinoma in females. However, the observed increase in incidences of kidney tubular casts atrophy are commonly found in this strain of rat and were considered by the Agency to be strain and/or age related. The increased incidence of acanthosis and ulcers of the forestomach in both sexes were seen at necropsy late in the study and were considered to be of equivocal toxicological significance, but could not be ruled out as treatment-related effects. The NOAEL of 12.6 mg/kg/day for a cancer scenario is the highest tested dose in the rat oral carcinogenicity study and, though it is considered to be inadequate for assessing carcinogenicity in female rats because they could have tolerated a higher dose, it still is suitable for use as a NOAEL for the possibility of cancer induction in female rats. The dosing in males at 200 ppm (9.2 mg/kg/day) is considered to approach an adequate level because there was a (minimal) decrease of 7% of body weight and a reduction of up to 10% in body weight gain in addition to the slightly increased incidence of erosion/ulceration of glandular stomach and forestomach. The rat carcinogenicity study, rather than the mouse carcinogenicity study, was used for endpoint selection because the NOAELs in the latter study are higher.

The NOAEL of 9.0 mg/kg/day from the 28–day rat feeding study, based on increased incidences of duodenal mucosal hyperplasia in rats of both sexes at the LOAEL of 42.3 mg/kg/day, was selected based on the hypothesis that the observed hyperplasia would progress to duodenal neoplasia following long-term exposure to pyraclostrobin. This endpoint was also noted in the 13–week rat feeding study, with a NOAEL of 10.7 mg/kg bodyweight per day, and in the range-finding reproductive toxicity study.

The dietary MOEs from residues in food and water that were calculated from the above three endpoints were 1,100 for the NOAEL of 3.4 mg/kg/day, 3,200 for the NOAEL of 9.6 mg/kg/day, and 4,200 for the NOAEL of 12.6 mg/kg/day.

iv. *Anticipated residue and percent crop treated (PCT) information*. Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

In the pyraclostrobin risk assessment the Agency used PCT data as follows. PCT values of 100% were assumed where no more-refined data were available. EPA utilized PCT values of less than 100% for the following commodities: Beet, sugar; berry, group; fruit, citrus, group; fruit, stone, group; grain, cereal, group; grape; nut, tree, group; pea and bean, dried shelled, except soybean, subgroup; peanut; pistachio; potato; strawberry; tomato; vegetable, bulb, group; vegetable, cucurbit, group; and vegetable, root and tuber, group. These PCT values are based on projected market share information. The registrant provided the Agency with their anticipated market share projections. The Agency estimated market share projections comparing the efficacy spectrum of the registered alternatives to the spectrum of pyraclostrobin. In conducting its risk assessment, the Agency utilized the EPA-derived estimates. The Agency believes that this approach is conservative and will overestimate the potential risk. To further ensure the reliability of these data, as a condition of registration, the registrant will be required to provide annual reports on the market penetration and market share of pyraclostrobin for each of the registered crops.

The Agency believes that the three conditions listed above have been met. With respect to condition 1, PCT estimates are derived from company-provided anticipatory data that have been reviewed by the Agency and are believed to be reliable and to have a valid basis. Since there are not any use data for a new pesticidal active ingredient prior to its initial registration, the Agency believes that company anticipatory estimates provide the best initial estimation of PCT data and is reasonably certain that the percentage of the food treated is not likely to be an underestimation. Conditions 2 and 3 are satisfied by the use of regional consumption data and consumption data for significant subpopulations in EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of these consumption data in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which [pyraclostrobin] may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks monitoring

exposure data to allow it to complete a comprehensive dietary exposure analysis and risk assessment for pyraclostrobin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling, taking into account data on the physical characteristics of pyraclostrobin.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce surface water estimates of pesticide concentrations in an index reservoir. The Screening Concentration In Ground Water (SCI-GROW) model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop treated (PCT) area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as points of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and from residential uses. Since DWLOCs address total aggregate exposure to pyraclostrobin they are further discussed in the aggregate risk sections.

Based on the FIRST and SCI-GROW models the EECs of pyraclostrobin for acute exposures are estimated to be 20.4 parts per billion (ppb) for surface water and 0.009 ppb for ground water. The EECs for chronic exposures are estimated to be 0.79 ppb for surface water and 0.009 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). However, pyraclostrobin is not registered for use on any sites that would result in residential exposure. .

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether pyraclostrobin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyraclostrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyraclostrobin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. Qualitative (but not quantitative) evidence of increased susceptibility to pyraclostrobin of infants and children, as compared to adults, was seen in the prenatal development study in rabbits, but neither qualitative nor quantitative evidence of increased susceptibility to pyraclostrobin was seen in rats.

3. *Conclusion*. There is an incomplete toxicity database for pyraclostrobin, but exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency concluded, despite the 2-generation reproduction study of rats data gap, that the FQPA SF can be reduced to 3x for pyraclostrobin because: (a) Only qualitative susceptibility was seen and this occurred in only one species, (b) there is no qualitative or quantitative evidence of increased susceptibility following *in utero* exposure to pyraclostrobin in the prenatal development study in rats, (c) a developmental neurotoxicity study is not required, and (d) the dietary (food and drinking water) and residential exposure assessments do not underestimate the potential exposure for infants, children, or women of childbearing age. The 3x FQPA SF was derived prior to finalizing the FQPA SF guidance document on January 31, 2002. A formal reconsideration of the FQPA SF was not made but the Agency did consider the effect of the application of the ''weight of evidence'' approach described in the guidance document on the value of the safety factor. It was concluded that the 3x FQPA SF established prior to the completion of the guidance document would not increase since the developmental effects in the rabbit prenatal developmental toxicity study are well characterized and the NOAEL for these effects is established. Therefore, there is no need for an additional FQPA SF to address potential prenatal or postnatal toxicity. In other words, for acute dietary and residential exposure assessment of the females 13-50 years old population subgroup, the 3x FQPA SF would likely be reduced to 1x. Also, the 3x FQPA SF for assessing chronic dietary and residential exposures would not increase because of the data base deficiency of the 2-generation reproduction study. The reproduction study that was submitted was rejected solely because it did not test at a high enough dose to identify toxicity. In that study, there was no parental systemic, reproductive, or offspring toxicity at any dose including the top dose of 29–36

mg/kg/day, which is well above the NOAELs of other repeated dose toxicity studies. Thus, conduct of another reproduction study will better define reproductive effects at high doses but, in all likelihood, will have no effect on the RfD.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, at the 95th percentile the acute dietary exposure to pyraclostrobin from food will occupy < 1.0% of the aPAD for the U.S. population, 41% of the aPAD for females 13-50 years old, < 1.0% of the aPAD for infants (< 1–year old), and < 1.0% of the aPAD for children (1-6 years old). In addition, there is potential for acute dietary exposure to pyraclostrobin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO PYRACLOSTROBIN.

Population Subgroup[1]	aPAD mg/kg/day	Food Exposure mg/kg/day (95th percentile)	Maximum Water Exposure (mg/kg/day)[2]	Acute Ground Water EEC[3] (µg/L)	Acute Surface Water EEC[4] (µg/L)	DWLOC (µg/L)[5]
U.S. population	3.0	0.0094	3.0	0.009	0.009	1.0×10^5
All Infants	3.0	0.014	3.0			3.0×10^4
Females (13-50 years old)	0.017	0.0068	0.043			1.3×10^3
Children (1-6 years old)	3.0	0.022	3.0			3.0×10^4
Males (13-19 years old)	3.0	0.0083	3.0			1.0×10^5

[1]Population subgroups chosen were the female subgroup with the highest food exposure (60 kg/ body weight assumed) the male subgroup with the highest food exposure (70 kg body weight assumed) and infant/child subgroups with the highest food exposure (10 kg/ body weight assumed).

[2] Maximum Water Exposure (mg/kg/day) = PAD (mg/kg/day) - Food Exposure from DEEM (mg/kg/day).

[3]Based upon SCI-GROW modeling results.

[4] Based upon FIRST (version 2) modeling results.

[5] DWLOC(µg/L) = maximum water exposure (mg/kg/day) x body weight (kg)/water consumption (L) x 10^3 mg/µg

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to [pyraclostrobin] from food will utilize 27% of the cPAD for the U.S. population, 31% of the cPAD for infants < 1–year old, and 74% of the cPAD for children (1-6 years old). There are no residential uses for pyraclostrobin that result in chronic residential exposure to pyraclostrobin. However, there is potential for chronic dietary exposure to pyraclostrobin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 5:

TABLE 5.—SUMMARY OF CHRONIC DRINKING WATER LEVELS OF COMPARISON FOR PYRACLOSTROBIN.

Population Subgroup[1]	cPAD (mg/kg/day)	Food Exposure (mg/kg/day)	Maximum Water Exposure[2] (mg/kg/day)	Chronic Ground Water EEC3 (µg/L)	Chronic Surface Water EEC4 (µg/L)	DWLOC5 (µg/L)
U.S. population	0.011	0.0030	8.0×10^{-3}	0.009	0.79	280
All infants	0.011	0.0034	7.6×10^{-3}			76
Children (1-6 years)	0.011	0.0082	2.8×10^{-3}			28
Females (13-50 years old)	0.011	0.0022	8.8×10^{-3}			290
Males (13-19 years old)	0.011	0.0028	8.2×10^{-3}			290

[1]Population subgroups chosen were U.S. population (70 kg body weight assumed), the female subgroup with the highest food exposure (60 kg body weight assumed), the male subgroup (70 kg body weight assumed) with the highest food exposure, and infant/child subgroups with the highest food exposure (10 kg body weight assumed).
[2]Maximum Water Exposure (mg/kg/day) = PAD (mg/kg/day) - Food Exposure from DEEM (mg/kg/day)
[3]Based upon PRZM/EXAMS Index Reservoir modeling results.
[4]Based upon SCI-GROW modeling results.
[5]DWLOC(µg/L) = maximum water exposure (mg/kg/day) x body weight (kg)/water consumption (L) x 10^{-3} mg/µg

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Pyraclostrobin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Pyraclostrobin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. The database for carcinogenicity is incomplete. MOEs have been calculated for chronic (cancer) food exposure based on NOAELs of 3.4 and 12.6 mg/kg/day from the 2–year carcinogenicity feeding study in rats and a NOAEL of 9.0 mg/kg/day from the 28–day rat feeding study. MOEs for drinking water exposure, using the SCI-GROW model chronic estimate of 0.009 ppb pyraclostrobin in ground water, are presented in the following table 6 as are the MOEs for food plus drinking water.

TABLE 6.—MARGINS OF EXPOSURE (MOES) BASED UPON CHRONIC (CANCER) AGGREGATE EXPOSURE (FOOD PLUS WATER ONLY) TO PYRACLOSTROBIN FOR THE U.S. POPULATION

NOAEL (mg/kg/day)	Exposure from food (mg/kg/day)	MOE (food)	Exposure from water (mg/kg/day)	MOE (water)	MOE (food + water)
3.4	0.0030	1,100	2.3×10^{-5}	1.5×10^{5}	1,100
9.0		3,000		4.2×10^{5}	3,000
12.6		3,000		4.2×10^{5}	4,200

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to pyraclostrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Two tolerance enforcement methods have been proposed by BASF for the determination of pyraclostrobin and its desmethoxy metabolite (BF 500–3) in or on plant commodities: (a) The Liquid Chromatography/Mass Spectrometry (LC/MS) method number D9808 and (b) the HPLC/UV method number D9904. The validated method limits of quantitation for pyraclostrobin and BF 500–3 for both methods are 0.02 ppm for each analyte in plant matrices. Adequate independent method validation and radiovalidation data have been submitted for both methods. These methods have been forwarded to the Agency's Analytical Chemistry Laboratory for validation.

The Agency has also received two tolerance enforcement methods for ruminant commodities: HPLC/UV method number 439/0 and 446, which consists of Gas Chromatography (GC)/MS method number 446/0 and LC/MS/MS method number 446/1. The HPLC/UV method determines residues of pyraclostrobin per se. Method number 446 has a hydrolysis step and determines residues of pyraclostrobin and its metabolites as the molecules BF 500–5 and BF 500–8. These methods have also been forwarded to the Agency's Analytical Chemistry Laboratory for validation.

The petitioner must make any modifications or revisions to the proposed methods resulting from the Agency's validation. Upon successful

completion of the validation, the methods will be forwarded to FDA for publication in a future revision of the Pesticide Analytical Manual, Volume II (PAM-II). Before publication and upon request, the methods will be available, prior to the harvest season, from the Analytical Chemistry Branch (ACB), Biological and Economic Analysis Division (7503C), Environmental Science Center, 701 Mapes Road, Ft. George C. Meade, MD 20755–5350. Contact Francis D. Griffith, Jr., telephone (410) 305–2905, e-mail: *griffith.francis@epa.gov*. The analytical standards are also available from the EPA National Standard Repository at the same location.

Pyraclostrobin was successfully evaluated through several of the FDA multiresidue method protocols, while BF 500–3 was unsuccessful in all protocols. Pyraclostrobin was completely recovered through Protocol D (in grape) and E (in grape), and partially recovered through Protocol F (in peanut). Metabolite BF 500–3 had poor peak shape and inadequate sensitivity with Protocol C columns and therefore was not further analyzed under Protocols D, E, and F. The results of the multiresidue testing for pyraclostrobin will be forwarded to FDA for inclusion in PAM Volume I.

B. International Residue Limits

No Codex or Mexican maximum residue levels (MRLs) have been proposed or are established for residues of pyraclostrobin. Therefore, no tolerance discrepancies exist between countries for this chemical. Since the application for registration of pyraclostrobin was reviewed jointly with the Pest Management Regulatory Agency (PMRA) of Canada, several Canadian MRLs for pyraclostrobin are proposed and are expected to be established soon. However, the joint review is expected to have eliminated the potential for discrepancies between U.S. tolerances and Canadian MRLs.

V. Conclusion

Therefore, tolerances are established for combined residues of pyraclostrobin carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester and its desmethoxy metabolite methyl 2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl carbamate, expressed as parent compound, in or on almond, hulls at 1.6 ppm; Banana at 0.04 ppm; barley, grain at 0.4 ppm; barley, hay at 25 ppm; barley, straw at 6.0 ppm; bean, dry at 0.3 ppm; beet, sugar, dried pulp at 1.0 ppm; beet, sugar, roots at 0.2 ppm; beet, sugar, tops at 8.0 ppm; berry, group at 1.3 ppm; citrus, dried pulp at 5.5 ppm; citrus, oil at 4.0 ppm; fruit, citrus, group at 0.7 ppm; fruit, stone, group at 0.9 ppm; grain, aspirated fractions at 2.5 ppm; grape at 2.0 ppm; grape, raisin at 7.0 ppm; grass, forage at 10 ppm; grass, hay at 4.5 ppm; grass, seed screenings at 27 ppm; grass, straw at 14 ppm; nut, tree, group at 0.04 ppm; peanut, nutmeat at 0.05 ppm; peanut, refined oil at 0.1 ppm; pistachio at 0.7 ppm; radish, tops at 16 ppm; rye, grain at 0.04 ppm; rye, straw at 0.5 ppm; strawberry at 0.4 ppm; vegetable, bulb, group at 0.9 ppm; vegetable, cucurbit, group at 0.5 ppm; vegetable, fruiting, group at 1.4 ppm; vegetable, root, except sugar beet, subgroup at 0.4 ppm; vegetable, tuberous and corm, subgroup at 0.04 ppm; wheat, grain at 0.2 ppm; wheat, hay at 6.0 ppm; and wheat, straw at 8.5 ppm, and combined residues of pyraclostrobin carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester and its metabolites convertible to 1-(4-chlorophenyl)-1H-pyrazol-3-ol and 1-(4-chloro-2-hydroxyphenyl)-1H-pyrazol-3-ol, expressed as parent compound, in or on cattle, fat at 0.1 ppm; cattle, liver at 1.5 ppm; cattle, meat at 0.1 ppm; cattle, meat byproducts, except liver at 0.2 ppm; goat, fat at 0.1 ppm; goat, liver at 1.5 ppm; goat, meat at 0.1 ppm; goat, meat byproducts, except liver at 0.2 ppm; hog, fat at 0.1 ppm; hog, liver at 1.5 ppm; hog, meat at 0.1 ppm; hog, meat byproducts, except liver at 0.2 ppm; horse, fat at 0.1 ppm; horse, liver at 1.5 ppm; horse, meat at 0.1 ppm; horse, meat byproducts, except liver at 0.2 ppm; milk at 0.1 ppm; sheep, fat at 0.1 ppm; sheep, liver at 1.5 ppm; sheep, meat at 0.1 ppm; and sheep, meat byproducts, except liver at 0.2 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0225 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 26, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your written request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or

refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0225, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final

rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: September 20, 2002.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.582 is added to read as follows:

§ 180.582 Pyraclostrobin; tolerances for residues.

(a) *General.* (1)Tolerances are established for combined residues of the fungicide pyraclostrobin carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester and its desmethoxy metabolite methyl 2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl carbamate, expressed as parent compound, in or on the following raw agricultural commodities.

Commodity	Parts per million
Almond, hulls	1.6
Banana	0.04
Barley, grain	0.4
Barley, hay	25
Barley, straw	6.0
Bean, dry	0.3
Beet, sugar, dried pulp	1.0
Beet, sugar, roots	0.2
Beet, sugar, tops	8.0
Berry group	1.3
Citrus, dried pulp	5.5
Citrus, oil	4.0
Fruit, citrus, group	0.7
Fruit, stone, group	0.9
Grain, aspirated fractions	2.5
Grape	2.0
Grape, raisin	7.0
Grass, forage	10
Grass, hay	4.5
Grass, seed screenings	27
Grass, straw grown for seed	14
Nut, tree, group	0.04
Peanut	0.05
Peanut, refined oil	0.1
Pistachio	0.7
Radish, tops	16
Rye, grain	0.04
Rye, straw	0.5
Strawberry	0.4
Vegetable, bulb	0.9
Vegetable, cucurbit, group	0.5
Vegetable, fruiting, group	1.4
Vegetable, root, except sugarbeet, subgroup	0.4
Vegetable, tuberous and corm, subgroup	0.04
Wheat, grain	0.02
Wheat, hay	6.0
Wheat, straw	8.5

(2) Tolerances are established for combined residues of the fungicide pyraclostrobin carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester and its metabolites convertible to 1-(4-chlorophenyl)-1H-pyrazol-3-ol and 1-(4-chloro-2-hydroxyphenyl)-1H-pyrazol-3-ol, expressed as parent compound, in or on the following raw agricultural commodities.

Commodity	Parts per million
Cattle, fat	0.1
Cattle, liver	1.5
Cattle, meat	0.1
Cattle, meat byproducts, except liver	0.2
Goat, fat	0.1
Goat, liver	1.5
Goat, meat	0.1
Goat, meat byproducts, except liver	0.2
Hog, fat	0.1
Hog, liver	1.5

Commodity	Parts per million
Hog, meat	0.1
Hog, meat byproducts, except liver	0.2
Horse, fat	0.1
Horse, liver	0.1
Horse, meat	0.1
Horse, meat byproducts, except liver	0.2
Milk	0.1
Sheep, fat	0.1
Sheep, liver	1.5
Sheep, meat	0.1
Sheep, meat byproducts, except liver	0.2

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 02–24487 Filed 9–26–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0204; FRL–7200–1]

Lambda-cyhalothrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of lambda-cyhalothrin in or on almond, hulls and various other food commodities in 40 CFR 180.438. Syngenta Crop Protection, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective September 27, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0204, must be received on or before November 26, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0204 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: William G. Sproat, Jr., Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: 703–308–8587; e-mail address: *sproat.william@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet home page at *http://www.epa.gov/*. To access this document, on the home page select ''Laws and Regulations'', ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0204. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of October 8, 1997 (62 FR 52588–52563) (FRL–5748–6) and May 12, 2000 (65 FR 30591–30596) (FRL–6497–1), EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of pesticide petitions (PP 7F4875 and 0F6092) by Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27419–8300.

These notices included a summary of the petition prepared by Syngenta, the registrant. There were no comments received in response to the notice of filing.

The petition(s) requested that 40 CFR 180.438 be amended by establishing a tolerance for residues of the insecticide lambda-cyhalothrin, in or on almond, hulls at 1.5 parts per million (ppm); apple pomace, wet at 2.50 ppm; avocados (imported) at 0.20 ppm; canola, seed at 0.15 ppm; cereal grain crop group (except rice and wild rice), grain, at 0.2 ppm; forage (except sorghum) at 6.0 ppm; hay at 2.0 ppm; straw at 2.0 ppm; aspirated grain dust at 2.0 ppm; bran at 0.8 ppm; flour at 0.6 ppm; fruit, pome, group at 0.3 ppm; fruit, stone, group at 0.50 ppm; nut, tree, group at 0.05 ppm; peanut, hay at 3.0 ppm; peas and beans - dried shelled, (except soybean), subgroup at 0.1 ppm; peas and beans - succulent shelled, subgroup at 0.01 ppm; sorghum, grain, forage at 0.3 ppm; sorghum, grain, stover at 0.5 ppm; sugarcane at 0.05 ppm; vegetables, fruiting, group (except cucurbits) at 0.2 ppm; and vegetables, legumes, edible podded subgroup at 0.2 ppm.

EPA has concluded that the tolerance requests for the cereal grain crop group are unacceptable at this time since additional residue field trial data are necessary in support of these tolerances. PP 0F06092 proposed a tolerance for canola seed of 0.15 ppm, subsequently revised in this final rule to 1.0 ppm on canola and 2.0 ppm in canola oil.

In addition, existing tolerances under § 180.438(a) for tomatoes at 0.1 ppm is no longer needed. It is being replaced with the new tolerance for the vegetables, fruiting, group (except cucurbits) at 0.2 ppm. In addition, existing tolerances for the section 18 emergency exemption under § 180.438(b) for sugarcane at 0.03 ppm is not needed since a tolerance is established by this regulation rule under § 180.438(a) for sugarcane at 0.05 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of lambda-cyhalothrin on almond, hulls at 1.5 ppm; apple pomace, wet at 2.50 ppm; avocados (imported) at 0.20 ppm; canola, seed at 0.15 ppm; fruit, pome, group at 0.3 ppm; fruit, stone, group at 0.50 ppm; nut, tree, group at 0.05 ppm; peanut, hay at 3.0 ppm; peas and beans - dried shelled, (except soybean), subgroup at 0.1 ppm ; peas and beans - succulent shelled, subgroup at 0.01 ppm; sorghum, grain, forage at 0.3 ppm; sorghum, grain, stover at 0.5 ppm; sugarcane at 0.05 ppm; vegetables, fruiting, group (except cucurbits) at 0.2 ppm; and vegetables, legumes, edible podded subgroup at 0.2 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by lambda-cyhalothrin are discussed in the Table 1 below as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed. Note that studies discussed below were conducted using either cyhalothrin or lambda-cyhalothrin. Cyhalothrin and lambda-cyhalothrin are basically the same chemical, the differences are found in their stereo chemistry and the number of isomers in each mixture. Cyhalothrin consists of four stereo isomers in each mixture. Cyhalothrin consists of four steno isomers while lambda-cyhalothrin is a mixture of the two isomers. The two lambda-cyhalothrin isomers are contained in cyhalothrin and they represent 40% of the cyhalothrin mixture. The major studies submitted to the Agency were conducted with cyhalothrin. However, these studies are used in support of registration for both mixtures. There is evidence, based on subchronic studies in rats, that the two mixtures are not biologically different with respect to their mammalian toxicity.

TABLE 1.—TOXICITY PROFILE OF LAMBDA-CYHALOTHRIN

Guideline No.	Study Type	MRID No. (year)/Classification/ Doses	Results
870.3100	13–Week feeding - rat (cyhalothrin)	00154805 1981/Acceptable 0, 0.5, 2.5, 12.5 mg/kg/day	NOAEL: 2.5 mg/kg/day LOAEL: 12.5 mg/kg/day (decreased body weight gain in males).
870.3100	13–Week feeding - rat (lambda-cyhalothrin)	00153028 1985/Acceptable 0, 0.5, 2.5, 12.5 mg/kg/day	NOAEL: 2.5 mg/kg/day LOAEL: 12.5 mg/kg/day (reduced body weight gain and food consumption in both sexesand food efficiency in females).

TABLE 1.—TOXICITY PROFILE OF LAMBDA-CYHALOTHRIN—Continued

Guideline No.	Study Type	MRID No. (year)/Classification/ Doses	Results
N/A	28–Day feeding - rat (cyhalothrin)	00153029 1984/Acceptable nonguideline 0, 2, 10, 25, 50, 75 mg/kg/day	NOAEL: 2 mg/kg/day LOAEL: 10 mg/kg/day (clinical signs of neurotoxicity). At higher doses, decreases inbody weight gain and food consumption and changes in organ weights.
N/A	28–Day feeding - rat (cyhalothrin)	00154806 1984/Acceptable nonguideline 0, 0.1, 0.5, 1.0, 2.0, 25.0 mg/kg/ day	NOAEL: 1.0 mg/kg/day LOAEL: 2.0 mg/kg/day (decreases in mean body weight gain in females).
N/A	4–Week feeding - mouse (cyhalothrin)	43241901 1981/Acceptable nonguideline 0, 0.65, 3.30, 13.5, 64.2, 309 mg/kg/day (males) 0, 0.80, 4.17, 15.2, 77.9, 294 mg/kg/day (females)	NOAEL: 64.2/77.9 mg/kg/day LOAEL: 309/294 mg/kg/day (mortality, clinical signs of toxicity, decreases in bodyweight gain and food consumption. changes in hematology and organ weights, minimal centrilobularhepatocyte enlargement).
870.3150	26–Week feeding - dog (cyhalothrin)	00154795 1981/Acceptable 0, 1.0, 2.5, 10.0 mg/kg/day	NOAEL: 1.0 mg/kg/day LOAEL: 2.5 mg/kg/day (increase in liquid feces. At 10.0 mg/kg/day, clinical signs ofneurotoxicity).
870.3200	21–Day dermal toxicity - rabbit (cyhalothrin)	00154869 1982/Acceptable 0, 10, 100, 1,000 mg/kg/day for 6 hours/day, 5 days/week for total of 15 applications	NOAEL: 100 mg/kg/day LOAEL: 1,000 mg/kg/day (significant weight loss)
870.3200	21–Day dermal toxicity - rat (lambda-cyhalothrin)	44333802 1989/Acceptable 0, 1, 10 mg/kg/day for 6 hours/ day for 21 consecutive days; 2–3 applications at 100 mg/kg/ day, reduced to 50 mg/kg/day for 21 consecutive days	NOAEL: 10 mg/kg/day LOAEL: 50 mg/kg/day (clinical signs of toxicity, decreased body weight and body weight gain)
N/A	21–Day inhalation toxicity - rat (lambda-cyhalothrin)	41387702 1990/Acceptable nonguideline 0, 0.3, 3.3, 16.7 μg/L; approx. 0, 0.08, 0.90, 4.5 mg/kg/day	NOAEL: 0.08 mg/kg/day LOAEL: 0.90 mg/kg/day (clinical signs of neurotoxicity, decreased body weight gains, increased incidence of punctuate foci in cornea, slight reductions in cholesterol in females, slight changes in selected urinalysis parameters).
870.3700	Developmental toxicity - rat (cyhalothrin)	00154800 1981/Acceptable 0, 5, 10, 15 mg/kg/day	Maternal NOAEL: 10 mg/kg/day Maternal LOAEL: 15 mg/kg/day (uncoordinated limbs, reduced body weight gain and food consumption). Developmental NOAEL: 15 mg/kg/day, the highest dose tested (HDT) Developmental LOAEL: >15 mg/kg/day
870.3700	Developmental toxicity - rabbit (cyhalothrin)	00154801 1981/Acceptable 0, 3, 10, 30 mg/kg/day	Maternal NOAEL: 10 mg/kg/day Maternal LOAEL: 30 mg/kg/day (reduced body weight gain and food consumption). Developmental NOAEL: 30 mg/kg/day (HDT) Developmental LOAEL: >30 mg/kg/day
870.3800	3-Generation Reproduction - rat (cyhalothrin)	00154802 1984/Acceptable 0, 0.5, 1.5, 5.0 mg/kg/day	Parental/Offspring NOAEL: 1.5 mg/kg/day Parental/Offspring LOAEL: 5.0 mg/kg/day (decreased parental body weight and body weight gain during premating and gestation periods and reduced pup weight and weight gain during lactation). Reproductive NOAEL: 5.0 mg/kg/day (HDT)
870.4100	1– Year oral - dog (capsule: lambda-cyhalothrin)	40027902 1986/Acceptable 0, 0.1, 0.5, 3.5 mg/kg/day	NOAEL: 0.1 mg/kg/day LOAEL: 0.5 mg/kg/day (clinical signs of neurotoxicity).

TABLE 1.—TOXICITY PROFILE OF LAMBDA-CYHALOTHRIN—Continued

Guideline No.	Study Type	MRID No. (year)/Classification/ Doses	Results
870.4200	Carcinoge nicity - mouse (cyhalothrin)	00150842 1984/Acceptable 0, 3, 15, 75 mg/kg/day	NOAEL: 15 mg/kg/day LOAEL: 75 mg/kg/day (increased incidence of piloerection, hunched posture; decreased body weight gain in males). Not oncogenic under conditions of study. HDT inadequate. New study not required at this time.
870.4300	Chronic/Carcinogenicity - rat (cyhalothrin)	00154803 1984/Acceptable 0, 0.5, 2.5, 12.5 mg/kg/day	NOAEL: 2.5 mg/kg/day LOAEL: 12.5 mg/kg/day (decreases in mean body weight). Not oncogenic under conditions of study.
870.6200	Acute neurotoxicity - rat (lambda-cyhalothrin)	44861510 1999/Acceptable 0, 2.5, 10, 35 mg/kg	NOAEL: 10 mg/kg LOAEL: 35 mg/kg (clinical observations indicative of neurotoxicity and changes in functional observational battery (FOB) parameters).
870.7485	Metabolism and Pharmacokinetics	00151116, 00150852, 00150852, 00150852, 00153036, 00153037 1981, 1984, 1985/Acceptable when combined together	In the rat, approximately 55% of the oral dose is absorbed. It is extensively metabolized when absorbed. After subcutaneous administration, the urinary/fecal excretion ratio is 2.5:1.0. Over 50% of the dose remained in the carcass 7 days after a subcutaneous dose. Metabolism includes cleavage of the ester to cyclopropylcarboxylic acid and a phenoxybenzyl derivative. The distribution patterns and excretion rates in the multiple oral dose studies are similar to the single oral dose studies. There is accumulation of unchanged compound in the fat upon chronic administration. Otherwise, cyhalothrin is rapidly metabolized and excreted. Cyclopropyl carboxylic acid, 3-phenoxybenzoic acid, glucuronide conjugated 3-4′-hydroxyphenoxy benzoic acid and a sulfate conjugate were identified in the urine. Cyhalothrin is taken up slowly by the fat and released slowly. It is rapidly released by blood, kidneys, liver. The rate of metabolism of both enantiomer pairs are likely identical (i.e. PP321 and PP563). The absorption, distribution, metabolism and excretion patterns of PP321 and cyhalothrin following a single dose of 1 mg/kg in the male rat appear to be identical.
870.7485	Metabolis m and Pharmacokinetics	00150843, 00150852 1984/Acceptable when combined together	In the dog, absorption of the C^{14} benzyl label was 80% and absorption of the C^{14} cyclopropyl label was 48%. The metabolite patterns were different, indicating extensive cleavageof the ester bond. Seven metabolites in urine were identified for the benzyl label and 12 metabolites for the isopropyl label. In the feces, a large proportion of the radioactivity was due to unchanged compound. Excretion in urine and feces was rapid (nearly all in 48 hrs.).
870.7600	Dermal penetration	44990402 1991/Acceptable 0.979, 0.099,0.001 and 0.0008 mg/cm^2 for 0.5, 1, 2, 4, 10 and 24 hours	Absorption ranged from 3.46 to 15.89%

TABLE 1.—TOXICITY PROFILE OF LAMBDA-CYHALOTHRIN—Continued

Guideline No.	Study Type	MRID No. (year)/Classification/ Doses	Results
870.7600	Dermal penetration	44333801 1984/Acceptable nonguideline Dermal studies: 1.25 mg/50 cm^2 dermal and 20 mg/800 cm^2 Dermal dose washed quantitatively after 8 hours. Oral study: 5 mg	Mild paraesthesia of varying degrees was observed following dermal dosing. The minimal oral absorption was estimated to be from 50.35 to 56.71%. The minimal dermal absorption was estimated to be from 0.115 to 0.122%. The estimated dermal absorption value of 1% was determined by rounding these values up to the nearest whole number. No metabolites were found near the limit of detection in plasma from the oral dose study. Blood was not analyzed from the dermal study.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for lambda-cyhalothrin used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR LAMBDA-CYHALOTHRIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose (mg/kg/day) UF/MOE	Special FQPA Safety Factor*	Study and Toxicological Effects
Acute Dietary general population including infants and children	NOAEL = 0.5 UF = 100 Acute RfD = 0.005 mg/kg	FQPA SF = 1 aPAD = acute RfD/FQPA SF = 0.005 mg/kg/day	Chronic oral study in the dog (lambda-cyhalothrin) LOAEL = 3.5 mg/kg/day based on clinical signs of neurotoxicity (ataxia) observed from day 2, 3 to 7 hours post-dosing.
Chronic Dietary all populations	NOAEL= 0.1 UF = 100 Chronic RfD = 0.001 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD/FQPA SF = 0.001 mg/kg/day	Chronic oral study in the dog (lambda-cyhalothrin) LOAEL = 0.5 based on gait abnormalities observed in 2 dogs
Incidental OralShort- and Intermediate-Term (1–30 days and 1–6 months) Residential Only	NOAEL= 0.1 MOE= 100	1	Chronic oral study in the dog (lambda-cyhalothrin) LOAEL = 0.5 based on gait abnormalities observed in 2 dogs
Dermal (All Durations)	Dermal NOAEL= 10 mg/kg/day		21–Day dermal toxicity study in the rat (lambda-cyhalothrin)

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR LAMBDA-CYHALOTHRIN FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose (mg/kg/day) UF/MOE	Special FQPA Safety Factor*	Study and Toxicological Effects
Residential	MOE = 100	1	LOAEL = 50 mg/kg/day based on clinical signs of neurotoxicity (observed from day 2) and decreased body weight and body weight gain
Occupational	MOE = 100	1	
Inhalation (All Durations)	Inhalation NOAEL= 0.3 µg/L (0.08 mg/kg/day)	.....	21–Day Inhalation Study in Rats (lambda-cyhalothrin) LOAEL = 3.3 µg/L (0.90 mg/kg/day) based on clinical signs of neurotoxicity, decreased body weight gains, increased incidence of punctuate foci in the cornea, slight reductions in cholesterol in females and slight changes in selected urinalysis parameters.
Residential	MOE = 100	1	
Occupational	MOE = 100	1	
Cancer	Classification: Group D chemical (not classifiable as to human carcinogenicity).		

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.438) for the residues of lambda-cyhalothrin, in or on a variety of raw agricultural commodities. Currently established tolerances for residues of lambda-cyhalothrin are listed under 40 CFR 180.438 and include permanent tolerances on plants ranging from 0.01 ppm on soybeans to 10.0 ppm on hops. Tolerances are also established for aspirated grain fractions, the head and stem Brassica subgroup, corn, cotton seed, dry bulb onions, lettuce, peanuts, soybeans, sorghum, sunflowers, tomatoes, and wheat; and on animal commodities ranging from 0.01 ppm in eggs, poultry meat, and poultry meat by-products to 5.0 ppm in milk fat (reflecting 0.2 ppm in whole milk). A tolerance of 0.01 ppm has been established for residues in foods potentially exposed to the insecticide during treatment of food handling establishments. A temporary tolerance for canola (0.1 ppm) is listed as expired as of 12/31/00.

Lambda-cyhalothrin is used to control a wide range of pests (including aphids, adult Japanese beetles, grasshoppers, and butterfly larvae) in a variety of agricultural applications and crops. For some crop uses, it is applied to soil before crops emerge. Current non-agricultural uses include ornamental gardens, lawns, landscapes, turf, golf courses, and general insect control (spot treatments and crack and crevice treatments) in around and on buildings, structures, and immediate surroundings. It may also be used for structural pest management and in public health applications to control insects such as mosquitoes, cockroaches, ticks, and flies, which may act as disease vectors. Other uses include ear tags and pour-ons for beef cattle.

Risk assessments were conducted by EPA to assess dietary exposures from lambda-cyhalothrin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A refined Tier 3 probabilistic acute dietary risk assessment was conducted for all currently registered and proposed lambda-cyhalothrin food uses. The acute dietary assessment includes dietary exposures calculated in a previous dietary assessment (Risk Assessment for Extension of Tolerances for Synthetic Pyrethroids, (62 FR 63002, Nov. 26, 1997; FRL–5755–5) as well as dietary exposures calculated for proposed uses.

The following data for the commodities with proposed new uses and tolerances were added to the original analysis: The entire distribution of residue field trial data was used for not-blended or partially-blended commodities; average residue field trial data were used for blended commodities; information from cooking and processing studies were used when available; and market share data for proposed and established tolerances were used.

For this updated analysis, with the exception of peas and beans (Crop Group 6), commodities as part of a crop group for which tolerances were proposed but data on each individual crop were not submitted, were analyzed using tolerance levels and 100%CT. For example, apples and pears, the representative crops for pome fruits, included residue field trial data and market share data which were included in the analysis. The remainder of the crop group was analyzed using tolerance level residues and 100%CT. The exception, peas and beans (Crop Group 6), used the submitted residue field trial data and market share data as appropriate for the entirety of each subgroup. In accordance with present EPA policy, potential residues from uses in food handling establishments were not included in the acute assessment.

The original 1997 analysis included probabilistic methods for acute dietary analyses for cattle (beef and dairy) to select the feed items comprising the potential cattle diets and associated residues. The same livestock information was used for the present analysis since the additional uses are not expected to increase dietary burden.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: This chronic dietary assessment includes dietary exposures calculated in a previous dietary assessment (Risk Assessment for Extension of Tolerances for Synthetic Pyrethroids, (62 FR 63002, Nov. 26, 1997, FRL–5755–5) as well as dietary exposures calculated for proposed uses.

The following data for the commodities with proposed new uses and tolerances were added to the original analysis: average of the residue field trials, information from cooking and processing studies, and market share data.

The original chronic dietary analysis (1997) included dietary burdens calculated using mean field trial residues, adjusted for percent of crop treated and applying appropriate processing factors, for all animal feed items and associated residues. For the updated analysis, with the exception of peas and beans (Crop Group 6), commodities as part of a crop group for which tolerances were proposed but data on each individual crop were not submitted were analyzed using tolerance levels and 100%CT. For example, apples and pears, the representative crops for pome fruits, included residue field trial data and market share data which were included in the analysis. The remainder of the crop group were analyzed using tolerance level residues and 100%CT. The exception, peas and beans (Crop Group 6), used the submitted residue field trial data and market share data as appropriate for the entirety of each subgroup.

In addition, the food handling establishment tolerance was included in the chronic analysis for all foods which did not have individual proposed or established tolerances. Since the tolerance was based on the LOQ, half of the LOQ was used in the chronic dietary analysis.

iii. *Cancer.* The database for carcinogenicity is considered complete, no additional studies are required at this time. The requirements for carcinogenicity studies in the rat and the mouse with lambda-cyhalothrin have been satisfied by a combined chronic/carcinogenicity study in rats and a carcinogenicity study in mice, both conducted with cyhalothrin. Although mice should have been tested at a higher dose, it was determined that there was not enough toxicological concern to warrant a requirement for a new carcinogenicity study in mice. Therefore, a dietary exposure assessment was not conducted. See Unit III.E.5 of this preamble for further discussion.

iv. *Anticipated residue and percent crop treated information.* Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

For existing uses, the Agency used estimates of PCT for the acute and chronic exposure assessments which were determined using Doanes market survey data (1998–2000). The following PCT estimates were used for existing registrations: alfalfa 1.8%; broccoli 13.11%; bulb onions/garlic 45.53%; cabbage 31.33%; sweet corn 43.61%; cotton 12.97%; lettuce (head and leaf) 20.47%; rice 10.33%; soybean 0.2%; squash 0.24%; tomatoes 21.03%; wheat 1.13%; and food handling establishments (13.7 %).

The Agency believes that the three conditions listed in Unit III.C.1.iv. of this preamble have been met. With respect to Condition 1, PCT estimates are derived from market survey data, which are reliable and have a valid basis. EPA uses an average PCT for chronic dietary exposure estimates. An average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute assessments, the Agency incorporates PCT information by creating a residue distribution file which includes the measured residue values from field trials, and zero residue values added to account for the percent of crop not treated. This approach is used only for nonblended or partially blended commodities as defined under EPA SOP99.6. For blended commodities, a single point estimate is created from the residue value multiplied by the upper bound PCT. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation.

For the new uses, the Agency used PCT estimates for acute and chronic exposure based on market share projections as follows: almonds 11.72%; apples 2.69%; avocados 2.0%; canola seed 1.87%; cherries 17.3%; dried shelled beans and peas 13.41%; edible podded beans and peas 0.40%; hazelnuts 17.91%; peanuts 4.53%; peaches 20.73%; pears 4.84%; pecans 12.5%; peppers 6.24%; sorghum 1.43%; succulent shelled beans and peas 0.84%; sugarcane 3.97%; and walnuts 11.82%.

The Agency believes that the three conditions previously discussed have been met regarding %CT estimates for the new lambda-cyhalothrin uses. With respect to Condition 1, EPA finds that the %CT information described in Unit II.C.1(iv) for lambda-cyhalothrin is reliable and has a valid basis. To support the use of these PCT estimates, the Agency has compared these estimates to existing usage data for currently registered insecticides used on the proposed lambda-cyhalothrin crop sites. Based on this comparison these estimates should not underestimate actual usage of lambda-cyhalothrin on the new crops/sites. The Agency also conducted a DEEM® analysis using the highest percent crop treated for a

competing alternative chemical for apples and peaches, high dietary contributors, and determined no significant increase in the acute RFD. To further support the reliability of these %CT estimates, as a condition of registration, the registrant will be required to agree to report annually on the market share attained for the new uses for which lambda-cyhalothrin is registered. As a condition of registration, they will also be required to agree to mitigate dietary risk as deemed appropriate by the Agency should the market share data raise a concern for increased dietary risk. The Agency will then compare that market share information with the percent crop treated estimates used to evaluate potential dietary risk. In those instances where percent market share is approaching or exceeding the predicted percent crop treated estimate used in the Agency's risk assessment, EPA will conduct a new dietary risk assessment to evaluate the new dietary risk. If the market share data raise a concern for increased pesticide risk, the Agency will act to mitigate that dietary risk and could employ several approaches not limited to production caps, geographical limitations, removal of uses, or other means deemed appropriate by the Agency. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which lambda-cyhalothrin may be applied in a particular area.

2. *Dietary exposure from drinking water*. Environmental fate studies suggest that lambda-cyhalothrin is moderately persistent in the environment, with laboratory half-lives ranging from 13–73 days and the field half-lives ranging from 12 to 63 days. This chemical has a strong tendency to bind to soil and sediments (Kd=1,970–7,610). The low mobility (due to high Kd) indicates that ground water contamination with the insecticide is highly unlikely. However, under runoff conditions, lambda-cyhalothrin is likely to reach surface water resources bound to soil particles. Once in the water system, lambda-cyhalothrin tends to partition to sediments.

The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for lambda-cyhalothrin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of lambda-cyhalothrin.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to lambda-cyhalothrin they are further discussed in the aggregate risk sections.

Based on the FIRST and SCI-GROW models the EECs of lambda-cyhalothrin for acute exposures are estimated to be 0.62 parts per billion (ppb) for surface water and 0.012 ppb for ground water. The EECs for chronic exposures are estimated to be 0.098 ppb for surface water and 0.012 ppb for ground water. The EECs for lambda-cyhalothrin are based on an application of the insecticide to sweet corn at a maximum of 16 applications per year at a rate of 0.48 lb active ingredient per acre per application.

3. *Non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Lambda-cyhalothrin is currently registered for use on the following residential non-dietary sites: ornamental gardens, lawns, landscapes, turf, golf courses, and general insect control (spot treatments and crack and crevice treatments) in, around, and on buildings, structures, and immediate surroundings. The risk assessment was conducted using the following residential exposure assumptions: A review of current labels indicates that all products, except for one aerosol can product, are limited to use only by certified applicators. As such, this assessment addresses the single residential handler scenario and postapplication scenarios associated with any use in a residential environment. It should be noted that the residential exposure/risk assessment is based on both proposed and existing uses for lambda-cyhalothrin because all potential residential exposures must be considered in the calculation of aggregate risks.

A non-occupational (residential) exposure assessment for lambda-cyhalothrin was completed in 1997 in conjunction with the Risk Assessment for Extension of Tolerances for Synthetic Pyrethroids (62 FR 63002, Nov. 26, 1997, FRL–5755–5). In the 1997 pyrethroid assessment, due to the wide variety of residential uses, it was agreed that flea control (simultaneous use on pets, lawns and indoor surfaces) would serve as a screening level scenario for all residential uses because it was anticipated to represent the highest potential for residential exposure. However, at that time, lambda-cyhalothrin uses did not include indoor surfaces or pets, so only

exposure estimates pertaining to the lawn uses were used as appropriate in the 1997 assessment for lambda-cyhalothrin.

The 1997 lambda-cyhalothrin assessment served as the basis for the current risk calculations. The only modifications have been adjusting the values from the 1997 assessment for appropriate absorption factors. This represents a definitive screening level approach because since that time the Agency has engaged in a series of revisions to its Standard Operating Procedures (SOPs) for Residential Exposure Assessments (i.e., latest on February 22, 2001). Incorporating the revisions to the SOPs would only refine the exposure estimates (i.e., in all cases MOEs would be higher).

For the residential assessment, existing uses on turf, in gardens, on golf courses, and for structural pest control were considered, but a quantitative calculation was only completed for postapplication exposure on treated turf because this scenario is expected to have the highest associated exposures (i.e., this scenario was used as a screening level tool for all residential exposures).

The Agency used a screening level approach to address the risks associated with the use of the aerosol can product of lambda-cyhalothrin that can be purchased and used by homeowners. In this case, a screening level quantitative calculation was only completed for postapplication exposure on treated turf because this scenario is expected to have the highest associated exposures of all residential exposures. In other words, this is a lower tier approach and EPA believes that the selected postapplication assessment on lawns for children is protective for all residential exposures (even the aerosol can handler scenario) because the dose levels for children playing on treated lawns are thought to exceed those expected for all other scenarios (i.e., lawn exposures for children represents the worst case scenario). This approach is based on the following considerations:

- For children on lawns, there was no dissipation of residues from the treated lawn since it was assumed that exposure was determined immediately after application of the lawn product.
- For children on lawns, dermal exposure was high because it was based on a jazzercise scenario which involves a high duration of exposure on the lawn and an intensity of activity that results in a high degree of contact with the treated lawn.
- Low application rate is expected for residential handler.
- Postapplication oral exposure to children on lawns was also calculated which resulted in acceptable MOEs (aggregate MOE = 500), this approach is thought to provide conservative estimates of exposure and it is not a route of consideration for adult handlers.

All residential (non-occupational) MOEs calculated using this screening level approach were well above the Agency target MOE of 100.

The Agency uses the term postapplication to describe exposures to individuals that occur as a result of being in an environment that has been previously treated with a pesticide. Lambda-cyhalothrin can be used in many areas that can be frequented by the general population including residential areas such as lawns. As a result, individuals can be exposed by entering these areas if they have been previously treated.

The postapplication assessment for treatment on lawns is based on a screening level approach in which children's and adult's exposure from treated turf were selected to represent the highest anticipated exposure scenarios. In this case, the Agency believes that exposures associated with contact to treated turf represent the high exposure scenario. Adults and children of varying ages can potentially be exposed by dermal and inhalation routes of exposure when they contact previously treated turf. Children may also be exposed by incidental non-dietary ingestion of turf. Each of these elements was considered in the calculation of postapplication exposure for lambda-cyhalothrin on turf. The residential MOEs were aggregated together because, regardless of the exposure route (dermal, inhalation or oral), lambda-cyhalothrin has similar adverse effects (i.e. neurotoxicity).

All residential (non-occupational) MOEs calculated using this screening level approach were well above the Agency target MOE of 100 for the inhalation, dermal, and oral routes and therefore do not exceed EPA's level of concern (range 700 to 14,700). Additionally, when total MOEs were calculated (i.e., each routes added together), MOEs still were not of concern (MOEs for children = 500 and for adults = 3,000).

A quantitative postapplication risk assessment for termiticide use was not performed for this use. Since the IMPASSE TM Barrier is placed under the foundation (poured concrete) of houses the potential for dermal exposure is negligible. The potential for postapplication inhalation exposure is also expected to be extremely minimal. Furthermore, the vapor pressure for lambda-cyhalothrin is very low (1.5 x 10^{-9} mmHg) and therefore EPA does not anticipate any significant air concentrations accumulating of lambda-cyhalothrin.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether lambda-cyhalothrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, lambda-cyhalothrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that lambda-cyhalothrin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. Through the use of bridging data, the toxicology database for lambda-cyhalothrin has been completed using developmental, reproduction, chronic (rodent) and oncogenicity studies conducted with cyhalothrin. With the exception of the developmental neurotoxicity study, the toxicology database for lambda-cyhalothrin, when

bridged with cyhalothrin, is complete and there are no data gaps. The scientific quality is relatively high and the toxicity profile of lambda-cyhalothrin can be characterized for all effects, including potential developmental, reproductive and neurotoxic effects. The data provided no indication of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to cyhalothrin. The requirement for developmental studies conducted with lambda-cyhalothrin have been satisfied with developmental studies conducted with cyhalothrin. The data demonstrate no indication of increased quantitative or qualitative sensitivity of rats or rabbits to *in utero* exposure to cyhalothrin. No developmental toxicity was observed in either of the developmental toxicity studies in rats and rabbits. Maternal toxicity was observed in the form of clinical signs of neurotoxicity and reduced body weight gain and food consumption in the rat study and reduced body weight gain and food consumption in the rabbit study. In the 3-generation reproduction study in rats, the parental/offspring NOAELs are the same based on decreased parental and pup body weight and body weight gain.

3. *Conclusion.* The cyhalothrins induce clinical signs of neurotoxicity in at least three species (rats, mice and dogs), and a developmental neurotoxicity (DNT) study has been required. A subchronic neurotoxicity study has recently been submitted but has not yet been reviewed; a preliminary review found that the NOAELs are higher than endpoints selected by EPA and this study is not expected to change conclusions of this risk assessment.

EPA has required that a DNT be conducted for lambda-cyhalothrin based upon structure activity relationship (SAR), mode of action, and toxicity information that identifies cyhalothrin and lambda-cyhalothrin as neurotoxic pesticides. Developmental neurotoxicity testing with cyhalothrin is required, to further characterize the potential hazard to the developing animal, in accordance with standard OPP guidance. This determination was based upon a weight-of-evidence evaluation of the database, conducted in accordance with principles first developed at a 1989 Agency workshop on quantitative and qualitative comparability of human and animal developmental neurotoxicity (Levine, T.E and R.E. Butcher (1990) Triggers for developmental neurotoxicity testing. Neurotoxicology and Teratology 12:281-284.), and which have been subsequently reviewed by the FIFRA Scientific Advisory Panel in connection with DNT guideline development (1989), the retrospective analysis of DNT studies submitted to OPPTS (December, 1998), and FQPA 10X guidance (May, 1999).

Although a DNT has been required, EPA evaluated whether the existing reliable toxicity data for lambda-cyhalothrin provided EPA with the confidence to make a safety finding for infants and children using a different safety factor than the default additional safety factor of 10X. For the reasons set forth, EPA has concluded that existing, reliable toxicity data provide reasonable certainty that a risk assessment conducted using no additional factor (1X) will protect the safety of infants and children. First, it is noted that there was no indication, in the developmental or reproductive toxicity studies or in any published literature studies, of increased sensitivity in the offspring of rats or rabbits to *in utero* and/or postnatal exposure to cyhalothrin. Since there is no evidence that immature animals respond more severely than adults to cyhalothrin exposure in these studies, there is less concern regarding the potential for increased sensitivity in a developmental neurotoxicity study.

Second, an extensive evaluation of the data base for the cyhalothrins revealed that no damage to the neurological system (i.e., microscopic lesions, commonly referred to as ''neuropathology'') was observed in the brain of rats or dogs following subchronic or chronic exposure and with formalin fixation of tissues. Even more importantly, in the acute neurotoxicity study with lambda-cyhalothrin, both central and peripheral nervous system tissues were examined following in situ perfusion fixation of tissues (which reduces microscopic artifacts that can result during processing). As per guideline recommendations, this included more extensive sampling and microscopic evaluation of these tissues than is required in standard subchronic or chronic studies. Even with this expanded examination, no treatment-related lesions were observed in the central and peripheral nervous system. (The subchronic neurotoxicity study with lambda-cyhalothrin is currently under review by EPA and was not available at the time of the prior EPA review; however, preliminary evaluation of the neuropathology data by EPA scientists did not reveal the presence of treatment-related lesions.) These findings demonstrate that lambda-cyhalothrin does not alter nervous system structure in adult rats, even at the microscopic level. Additionally, there was no evidence from the prenatal developmental toxicity studies (in rats and rabbits) and the two-generation reproduction study in rats, of malformations or variations of the central nervous system in offspring following *in utero* and/or postnatal exposures. Further, the generally accepted mechanism of action for pyrethroids, sodium channel disruption, has not been traditionally associated with developmental neuropathology. Together with the apparent lack of structural alterations in the nervous system of either adult or developing animals, this line of evidence leads to reduced concern regarding the potential that such effects would be observed in guideline developmental neurotoxicity testing.

Another critical factor in the database that supports EPA's determination that a safety finding can be made without use of an additional safety factor are the data bearing on the level at which neurotoxic effects and non-neurotoxic effects are observed in the rat (the animal used in performing DNTs) and the data pertaining to the level at which neurotoxic effects occur in dogs. While the precise outcome of a DNT study with lambda-cyhalothrin cannot be known prior to completion of the study, the existing toxicity data provide important information on whether any information is likely to emerge from the lambda-cyhalothrin DNT that would change the dose level used in estimating safe exposure levels to lambda-cyhalothrin in the lambda-cyhalothrin risk assessment. Based upon common principles of dose-setting, which utilize data from less complicated studies to inform the design of more complicated studies, it is highly probable that dietary dose levels for the DNT study will be based upon toxicity observed in the reproduction study in rats, considered in context of the complete toxicology database. In the reproduction study, parental and offspring effects consisted solely of body weight and body weight gain reductions at a dietary level of 100 ppm (approximately 5.0 mg/kg/day), and a NOAEL was established at 30 ppm (approximately 1.5 mg/kg/day) which was the mid-dose level on that study. Neurotoxicity effects have only been seen in the rat at significantly higher doses (acute oral neurotoxicity study having a NOAEL of 10 mg/kg/day and a LOAEL of 35 mg/kg/day). In the dog, neurotoxic effects have been found at lower levels (NOAEL of 0.5 mg/kg/day) than the non-neurotoxic effects seen in the rat reproductive study. What this indicates is that the DNT will likely be conducted at dose levels significantly lower than at which any neurotoxic

effects have previously been seen in the rat but still significantly greater than the levels used for assessing acute and chronic risk. Thus, the results from the DNT, even if they show sensitivity in the rat young (which would not be expected), are unlikely to change the levels used for assessing chronic and acute risk.

No quantitative or qualitative evidence of increased susceptibility of rat or rabbit fetuses to *in utero* exposure in the developmental studies was observed. No developmental toxicity was observed in either of these studies. No quantitative or qualitative evidence of increased susceptibility was observed in the 3-generation reproduction study in rats. Offspring toxicity (decreased pup weight and pup weight gain) was observed in the reproduction study at the same dose level as parental toxicity (decreased body weight and body weight gain). These effects are not considered to be more severe than the effects in the parents. There are no residual uncertainties for pre- and/or post-natal toxicity in any of the available studies with Cyhalothrin.

This information supports the dose analysis conducted by EPA as well as the removal of the special Food Quality Protection Act (FQPA) Safety Factor required for the protection of infants and children. Therefore, the FQPA Safety Factor (as discussed in the February 2002 OPP 10X guidance document) was reduced to 1X.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to lambda-cyhalothrin will occupy 41% of the aPAD for the U.S. population, 24% of the aPAD for females 13 years and older, 71% of the aPAD for all infants (< year old) and 82% of the aPAD for children 1–6 years old. In addition, there is potential for acute dietary exposure to lambda-cyhalothrin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO LAMBDA-CYHALOTHRIN

Population Subgroup	aPAD (mg/kg)	% aPAD	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Infant (<1 year old)	0.005	71	0.62	0.012	14
Child (1–6 years old)	0.005	82	0.62	0.012	9
Adult	0.005	41	0.62	0.012	168

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to lambda-cyhalothrin from food will utilize 8% of the cPAD for the U.S. population, 12% of the cPAD for all infants (<1 year old) and 22% of the cPAD for children 1–6 years old. Based on current use patterns, chronic residential exposure to residues of lambda-cyhalothrin is not expected. In addition, there is potential for chronic dietary exposure to lambda-cyhalothrin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO LAMBDA-CYHALOTHRIN

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Infant (<1 year old)	0.001	12	0.098	0.012	9

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO LAMBDA-CYHALOTHRIN—Continued

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Child (1–6 years old)	0.001	22	0.098	0.012	8
U.S. population	0.001	8	0.098	0.012	32

3. *Short- and Intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Lambda-cyhalothrin is currently registered for use that could result in short- and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short- and intermediate-term exposures for lambda-cyhalothrin.

Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs listed in Table 5 below. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short- and intermeidate-term DWLOCs were calculated and compared to the EECs for chronic exposure of lambda-cyhalothrin in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short- and itermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 5:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM AND INTERMEDIATE TERM EXPOSURE TO LAMBDA-CYHALOTHRIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
Infant	315	149	0.098	0.012	7
Child	239	172	0.098	0.012	6
General Population	867	113	0.098	0.012	31

5. *Aggregate cancer risk for U.S. population*. The database for carcinogenicity is considered complete, no additional studies are required at this time. The requirements for carcinogenicity studies in the rat and the mouse with lambda-cyhalothrin have been satisfied by a combined chronic/carcinogenicity study in rats and a carcinogenicity study in mice, both conducted with cyhalothrin. Although mice should have been tested at a higher dose, it was determined that there was not enough toxicological concern to warrant a requirement for a new carcinogenicity study in mice. Lambda-cyhalothrin is classified as a Group D chemical (not classifiable as to human carcinogenicity).

Under the conditions of the studies, lambda-cyhalothrin is not considered to be carcinogenic in either rats or mice. However, there has been a question concerning a slight but not statistically significant increase in mammary tumors in the mouse study. In that study, the dose levels were not sufficiently high to totally rule these out. Nevertheless, it is determined that there is not a sufficient toxicological concern to ask for a new study for the following reasons: an examination of the evidence of carcinogenicity with other pyrethroids showed no increases in mammary tumors with any other pyrethroid. In addition, from a mode of action standpoint, the primary effect of the pyrethroids is on the neuromuscular system. Pyrethroids generally stimulate nerve cells to produce repetitive discharges which are caused by their action on the sodium channel. Mammary gland carcinogenesis in the rodent can be caused by either mutagenesis or by a hormonal imbalance leading to elevated or prolonged exposure to estrogen. There is no evidence that the pyrethroid mode of action leads to a hormonal imbalance and lambda-cyhalothrin has not been shown to be a DNA reactive mutagen. For these reasons, it is unlikely that a repeat mouse study on lambda-cyhalothrin would provide any additional evidence. Therefore, a risk assessment for potential carcinogenicity to humans is not required.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to lambda-cyhalothrin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of lambda-cyhalothrin residues in plant and animal commodities. ICI Method 81 (PRAM 81) is used to determine the residues of lambda-cyhalothrin and its epimer in plant matrices and ICI Method 86 is used to determine residues of lambda-cyhalothrin and its epimer in animal matrices. Both methods have been validated by EPA as adequate enforcement methods for determination of parent lambda-cyhalothrin and its epimer in the respective matrices. ICI Method 96 is used to determine lambda-cyhalothrin metabolites in meat, milk, poultry and eggs. The LOQ for all three methods is 0.01 ppm.

B. International Residue Limits

There are currently no Mexican, Canadian or Codex maximum residue limits (MRLs) for lambda-cyhalothrin.

There are MRLs for cyhalothrin from which lambda-cyhalothrin is derived as an enriched isomer.

C. Magnitude of Residue

Residue field trial data are adequate to support the established and proposed lambda-cyhalothrin tolerances. The Monte Carlo methods for acute dietary analyses for cattle (beef and dairy) to select the feed items comprising the potential cattle diets and associated residues have been previously reviewed and found acceptable. The nature of the residues of lambda-cyhalothrin in plants and animals is understood. Quantifiable residues are expected on most treated commodities.

V. Conclusion

Therefore, the tolerance is established for residues of lambda-cyhalothrin, in or on almond, hulls at 1.5 ppm; apple pomace, wet at 2.50 ppm; avocados (imported) at 0.20 ppm; canola, seed at 0.15 ppm; fruit, pome, group at 0.3 ppm; fruit, stone, group at 0.50 ppm; nut, tree, group at 0.05 ppm; peanut, hay at 3.0 ppm; peas and beans - dried shelled, (except soybean), subgroup at 0.1 ppm ; peas and beans - succulent shelled, subgroup at 0.01 ppm; sorghum, grain, forage at 0.3 ppm; sorghum, grain, stover at 0.5 ppm; sugarcane at 0.05 ppm; vegetables, fruiting, group (except cucurbits) at 0.2 ppm; and vegetables, legumes, edible podded subgroup at 0.2 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0204 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 26, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your written request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0204 to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735,

October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 20, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.438 is amended by adding new commodities to the table in paragraph (a)(1) to read as follows, and by removing the entry for ''sugarcane'' from the table in paragraph (b).

§ 180.438 Lambda-Cyhalothrin; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * * *	
Almond, hulls	1.5
Apple pomace, wet	2.50
* * * * *	
Avocados (imported)	0.20
* * * * *	
Canola	1.0
Canola, oil	2.0
* * * * *	
Fruit, pome, group	0.30
Fruit, stone, group	0.50
* * * * *	
Nut, tree, group	0.05
* * * * *	
Pea and bean, dried shelled,(except soybean), subgroup	0.10
Pea and bean, succulent shelled, subgroup	0.01
Peanut, hay	3.0
* * * * *	
Sorghum, grain, forage	0.30
Sorghum, grain, stover	0.50
* * * * *	
Sugarcane	0.05
* * * * *	
Vegetables, fruiting, group (except cucurbits)	0.20
Vegetables, legume, edible podded, subgroup	0.20
* * * * *	

* * * * *

[FR Doc. 02–24486 Filed 9–26–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0221; FRL–7199–2]

Dimethomorph; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of dimethomorph in or on hop, dried cones at 60 parts per million (ppm); lettuce, leaf and lettuce, head at 10 ppm; vegetable, cucurbit, group at 0.5 ppm; and vegetable, bulb, group at 2.0 ppm. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective September 27, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0221, must be received on or before November 26, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0221 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–9368; e-mail address: *jamerson.hoyt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet home page at *http://www.epa.gov/*. To access this document, on the home page select ''Laws and Regulations'', ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0221. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 21, 2002 (67 FR 54192) (FRL–7191–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of pesticide petitions (PP 0E6178, 2E6386, 2E6410, 2E6432) by IR-4, 681 U.S. Highway 1 South, North Brunswick, NJ 08902–3390. This notice included a summary of the petitions prepared by BASF Corporation, Research Triangle Park, NC., the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.493 be amended by establishing tolerances for residues of the fungicide dimethomorph, [[(E,Z)4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine]], in or on the following food commodities:

1. PP 0E6178 proposed a tolerance for hop, dried cones at 60 ppm. This tolerance replaces the existing tolerance for hops, cones, dried at 60 ppm. There were no U.S. registrations for use of dimethomorph on hops when the existing tolerance was established. IR-4 provided magnitude of residue studies and has requested a new tolerance for hop, dried cones at 60 ppm in support of U.S. registration for hops.

2. PP 2E6386 proposed a tolerance for lettuce, leaf and lettuce, head at 10 ppm.

3. PP 2E6410 proposed a tolerance for vegetable, cucurbit, group at 0.5 ppm.

4. PP 2E6432 proposed a tolerance for vegetable, bulb, group at 2.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate

exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of dimethomorph on hop, dried cones at 60 ppm; lettuce, leaf and lettuce, head at 10 ppm; vegetable, cucurbit, group at 0.5 ppm; and vegetable, bulb, group at 2.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by dimethomorph are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	NOAEL = 73 milligrams/kilogram/day (mg/kg/day) for males, and 82 mg/kg/day for females. A LOAEL was not established, because the highest dose tested produced no biologically significant effect.
870.3150	90–Day oral toxicity in nonrodents	NOAEL = 15 mg/kg/day LOAEL = 43 mg/kg/day based on a decrease in the absolute and relative weights of the prostate and possible threshold liver effects (increased alkaline phosphatase activity at weeks 6 and 13).
870.3700	Prenatal developmental in rodents	Maternal NOAEL = 60 mg/kg/dayLOAEL = 160 mg/kg/day based on based on decreased mean body weight on gestation days 10–15; decreased body weight gain on gestation days 10–15, decreased food consumption days 6–15 .Developmental NOAEL = 60 mg/kg/dayLOAEL = 160 mg/kg/day based on increased resorptions.
870.3700	Prenatal developmental in nonrodents	Maternal NOAEL = 300 mg/kg/day LOAEL = 650 mg/kg/day based on decreased body weights and body weight gain. Developmental NOAEL = 650 mg/kg/day. No developmental toxicity was observed in this study.
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL = 20.8 mg/kg/day in males and 24 mg/kg/day in females. LOAEL = 69 mg/kg/day for males and 79.3 mg/kg/day for females based on decreased body weights and body weight gain. Reproductive NOAEL = 69 mg/kg/day for males and 79.3 mg/kg/day for females (highest dose tested). Offspring NOAEL = 20.8 mg/kg/day for males and 24 mg/kg/day for females. LOAEL = 69 mg/kg/day for males and 79.3 mg/kg/day for females based on delayed incisor eruption at day 10 postpartum.
870.4100	Chronic toxicity rodents	NOAEL = 11.9 mg/kg/day for females and 36.2 mg/kg/day for males.LOAEL = 57.7 mg/kg/day for female rats based on decreased body weight and a significant increase in the incidence of ground glass foci in the liver, and 99.9 mg/kg/day for male rats based on decreased body weight and increased incidence of arteritis.
870.4100	Chronic toxicity dogs	NOAEL = 14.7 mg/kg/day for males and 15.7 mg/kg/day for females. LOAEL = 44 mg/kg/day for males and 47 mg/kg/day for females based on based on decreased prostate weight in males.
870.4200	Carcinogenicity rats	NOAEL = 33.9 mg/kg/day for males and 11.4 mg/kg/day for females. LOAEL = 94.6 mg/kg/day for males and 46.3 mg/kg/day for females based on decreased body weight gain.The test material had no significant effect on the development of neoplasms in male or female rats at the doses tested. Dimethomorph was tested at adequate doses based on significant decreases in body weight (17% and 13%) and body weight gains (27% and 14%) in females and males, respectively, in the high dose groups.
870.4300	Carcinogenicity mice	There were no treatment-related increases in the incidence of any neoplastic lesions. The chemical was adequately tested based on decreased body weight gain at 1,000 mg/kg/day. The NOAEL for systemic toxicity is 100 mg/kg/day.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
	Gene Mutation/Cytogenetics/Other Effects	Dimethomorph did not cause gene mutations in *Salmonella* or *E. coli* bacterial strains, as well as in mammalian gene mutation studies. It was negative for structural chromosomal aberrations in the mouse micronucleus assay at up to 5,000 mg/kg after oral treatment, and up to 200 mg/kg when administered intraperitoneally. However, dimethomorph gave positive responses when tested in Chinese hamster lung at high doses. Dimethomorph was weakly positive when tested in human lymphocytes when treated up to the highly toxic dose of 422 micrograms/milliliter, but was negative in the absence of activation at all doses. Dimethomorph was negative in the cell transformation assay in Syrian hamster embryo cells with and without activation at up to cytotoxic levels.
870.7485	Metabolism and pharmacokinetics	Oral administration of dimethomorph results in rapid excretion into the urine and feces of rats. For all treatment protocols, most (80–90%) of the radiolabel administered was excreted in the feces. A considerably smaller amount (6–16%) was excreted in the urine and only minimal levels (0.1–0.4%) were detected in the organs and tissues. Rapid absorption may be inferred by the rapid excretion of metabolites in the urine and bile. Retention of dimethomorph or ^{14}C-dimethomorph-derived radioactivity was generally ≤1% for most tissues although the liver exhibited slightly higher levels (1.4%). Urinary metabolites resulted from demethylation of the dimethoxyphenyl ring and oxidation of the morpholine ring. Biliary excretion exhibited first-order kinetics with a low-dose (10 mg/kg) half-life of approximately 3 hours and a high-dose (500 mg/kg) half-life of 11 hours for males and about 6 hours for females. Biliary metabolites accounted for most of the fecal excretion following low-dose treatment. The major biliary metabolites were glucuronides of one and possibly two of the compounds produced by demethylation of the dimethoxyphenyl ring.
870.7600	Dermal penetration	In a dermal penetration study, radio-labeled ^{14}C-dimethomorph in water was administered dermally to 4 male SD rats/group for 8 hours at doses of 7.73 (2.5% w/v aqueous suspension) or 79.62 mg/kg (25% w/v aqueous suspension). Dermal absorption was 0.05%, 0.07% and 0.27% of the administered dose from rats 4, 8, and 24 hours after dermal treatment at 7.73 mg/kg, and 0.02%, 0.16% and 0.12% of the dose at 79.62 mg/kg. Six days after treatment the percent total absorption of the dose in the 7.73 and 79.62 mg/kg was 4.76 and 1.20 percent respectively.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for dimethomorph used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR DIMETHOMORPH FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary	Not applicable.	Not applicable.	No effects attributable to a single exposure (dose) were observed from oral toxicity studies including developmental toxicity studies.
Chronic Dietaryall populations	NOAEL= 11 mg/kg/day UF = 100 Chronic RfD = 0.1 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD/FQPA SF = 0.1 mg/kg/day	Rat carcinogenicity study LOAEL = 46.3 mg/kg/day based on decreased body weight and statistically significant increases in liver lesions in female rats.
Short-term Dermal (1 to 7 days)(Residential)	oral study NOAEL = 60 mg/kg/day (dermal absorption factor = 5%).	LOC for MOE = 100	Developmental Toxicity Study in the rat LOAEL = 160 mk/kg/day based on decreased body weight, decreased body weight gain, and decreased food consumption.
Intermediate -Term Dermal (1 week to several months)(Residential)	Oral study NOAEL = 15 mg/kg/day (dermal absorption factor = 5%	Not applicable.	Subchronic Feeding Study in Dogs LOAEL = 43 mg/kg/day based on decreased absolute and relative prostate weight and possible threshold liver effects.
Long-Term Dermal (several months to lifetime)	Not applicable.	Not applicable.	The use pattern does not indicate a concern for long-term exposure/risk.
Short-Term Inhalation (1 to 7 days)	Oral study NOAEL = 60 mg/kg/day (inhalation absorption factor = 100%)	LOC for MOE = 100	Developmental Toxicity Study in the Rat LOAEL = 160 mg/kg/day based on decreased body weight, decreased body weight gain, and decreased food consumption.
Intermediate-Term Inhalation (1 week to several months)	Oral study NOAEL = 15 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100	Subchronic Feeding Study in Dogs LOAEL = 43 mg/kg/day based on decreased absolute and relative prostrate weight and possible threshold liver effects.
Long-Term Inhalation (several months to lifetime)	Not applicable.	Not applicable.	The use patterns do not indicate a concern for long-term exposure/risk.
Cancer (oral, dermal, inhalation)	Not applicable.	Not applicable.	Dimethomorph was classified as Not Likelyto be a human carcinogen. This classification is based on the lack of evidence of carcinogenicity in mice and rats when tested at doses that were judged to be adequate to assess carcinogenicity.

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.493) for the residues of dimethomorph, in or on grape at 3.5 ppm; hops, cones, dried at 60 ppm; raisins at 6.0 ppm; potato at 0.05 ppm; potato, wet peel at 0.15 ppm; tomato at 0.5 ppm and tomato, paste at 1.0 ppm. There were no U.S. registrations for grape, hop, or raisins at the time the tolerances were established for these food commodities. Time-limited tolerances are established for residues of dimethomorph in or on cantaloupe, cucumber, squash, and watermelon at 1.0 ppm in connection with the use of the pesticide under section 18 emergency exemptions. Risk assessments were conducted by EPA to assess dietary exposures from dimethomorph in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An acute exposure assessment was not performed since no effects attributable to a single exposure (dose) were observed from oral toxicity studies.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The chronic exposure assessment is based on very conservative assumptions that all commodities that have tolerances for dimethomorph and the commodities included in this action will contain residues (100 percent crop treated) at the tolerance level.

iii. *Cancer.* A cancer exposure assessment was not performed since dimethomorph is classified as Not Likely to be a human carcinogen.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for dimethomorph in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on

the physical characteristics of dimethomorph.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to dimethomorph they are further discussed in the aggregate risk sections in Unit III.E of this preamble.

Based on the FIRST and SCI-GROW models the EECs of dimethomorph for chronic exposures are estimated to be 28.5 ppb parts per billion (ppb) for surface water and 0.30 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Dimethomorph is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether dimethomorph has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, dimethomorph does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that dimethomorph has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. The developmental and reproductive toxicity data did not indicate increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure.

3. *Conclusion*. There is a complete toxicity database for dimethomorph and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be reduced to 1X. The FQPA factor was reduced because:

i. The toxicology database is complete; the developmental and reproductive toxicity data did not indicate increased quantitative or qualitative susceptibility of rats or rabbits to *in utero* and/or postnatal exposure.

ii. A developmental neurotoxicity study is not required by the Agency. There is no evidence of neurotoxicity in the current toxicity database.

iii. The dietary (food and water) exposure assessment did not indicate a concern for potential risk to infants and children when tolerance level residues were used. The use of tolerance level residues results in an overestimate of dietary exposure.

iv. Residential exposure is not expected since dimethomorph is not registered for residential use.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the U.S. EPA are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to

the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. An appropriate endpoint attributable to a single exposure for the general U.S. population (including infants and children) was not identified. An acute risk assessment was not performed, since no acute risk from dietary exposure is expected.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to dimethomorph from food will utilize 5% of the cPAD for the U.S. population, 6% of the cPAD for infants less than 1 year old and 10% of the cPAD for children 1 to 6 years old, the subpopulation at greatest exposure. There are no residential uses that result in chronic residential exposure to dimethomorph. In addition, there is potential for chronic dietary exposure to dimethomorph in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO DIMETHOMORPH

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.10	5	28.5	0.30	3,300
Infants, less than 1 year old	0.10	6	28.5	0.30	940
Children, 1 to 6 years old	0.10	10	28.5	0.30	900
Females 13 to 50 years old	0.10	5	28.5	0.30	2,900

3. *Short- and intermediate-term risk*. Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Dimethomorph is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population*. The Agency concludes that pesticidal uses of dimethomorph are not likely to pose a carcinogenic hazard to humans.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to dimethomorph residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate method is available for enforcement of the tolerances. FAMS 002–02 is a high pressure liquid chromatography analytical method with ultraviolet detection and is adequate for determining residues of dimethomorph per se. The method has been successfully validated by the Agency's Analytical Laboratory. The method may be requested from: Paul Golden, U.S. EPA/OPP/BEAD/ACB, Environmental Science Center, 701 Mapes Road, Fort Meade, MD 20755–5350; telephone number: 410–305–2960; FAX 410–305–3091; e-mail address: RAM Mailbox.

B. International Residue Limits

There are no established or proposed maximum residue limits or tolerances for dimethomorph in or on hop, dried cones; lettuce, leaf; lettuce, head; vegetable, cucurbit, group; or vegetable, bulb, group.

V. Conclusion

Therefore, the tolerance is established for residues of dimethomorph, [(E,Z)4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine]], in or on hop, dried cones at 60 ppm; lettuce, leaf and lettuce, head at 10 ppm; vegetable, cucurbit, group at 0.5 ppm; and vegetable, bulb, group at 2.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0221 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 26, 2002.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your written request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0221, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal

Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 23, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.493 is amended by removing the entry for ''Hops, cones, dried [1]'', and by alphabetically adding the following commodities to the table in paragraph (a)(1) to read as follows:

§ 180.493 Dimethomorph; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * *	*
Hop, dried cones	60
* * * *	*
Lettuce, head	10
Lettuce, leaf	10
* * * *	*
Vegetable, bulb, group	2.0
Vegetable, cucurbit, group	0.5

* * * * *

[FR Doc. 02–24485 Filed 9–26–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0195; FRL–7199–5]

Spinosad; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of spinosad in or on fig at 0.10 part per million (ppm); herb, fresh, subgroup at 3.0 ppm; herb, dried, subgroup at 22 ppm; vegetable, root and tuber, group at 0.10 ppm; caneberry subgroup at 0.70 ppm; grape at 0.50 ppm; grape, raisin at 0.70 ppm; peanut at 0.02 ppm; and beet, sugar, molasses at 0.75 ppm. This regulation also increases established tolerances for cattle, meat to 0.50 ppm; cattle, meat byproducts to 2.0 ppm; cattle, fat to 6.5 ppm; milk to 2.5 ppm; and milk, fat to 27 ppm. The Interregional Research Project Number 4 (IR-4) and Elanco Animal Health, A Division of Eli Lily and Company, requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective September 27, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0195, must be received on or before November 26, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0195 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person

listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,* a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0195. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of May 3, 2000, 65 FR 2572, FRL–6555–9 and August 21, 2002, 67 FR 54200, (FRL–7191–6), EPA issued notices pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petition (PP 0F6115) by Elanco Animal Health, a Division of Eli Lilly and Company, 2001 W. Main St., Greenfield, IN 46140, and (PP 1E6321, 2E6354, 2E6370, 2E6384, 2E6400, and 2E6422) by the Interregional Research Project Number 4 (IR–4), 681 U.S. Highway #1, South, North Brunswick, NJ 08902–3390. These notices included summaries of the petitions prepared by Dow AgroScience LLC, Indianapolis, IN 46268, the registrant. There were no comments received in response to the notices of filing.

The petitions requested that 40 CFR 180.495 be amended by establishing tolerances for residues of the insecticide spinosad, in or on food commodities as follows:

1. PP 1E6321 proposed establishment of a tolerance for fig at 0.1 ppm,

2. PP 2E6354 proposed establishment of a tolerance for herbs subgroup at 8.0 ppm. The petition was revised to propose tolerances for the herb, fresh, subgroup at 3.0 ppm; and the herb, dried, subgroup at 22 ppm.

3. PP 2E6384 proposed establishment of tolerances for root vegetable subgroup at 0.10 ppm, and dry bulb onion at 0.1 ppm. The petition was revised to propose a tolerance for the vegetable, root and tuber, group at 0.10 ppm; and a separate tolerance for beet, sugar, molasses at 0.75 ppm.

4. PP 2E6400 proposed establishment of a tolerance for caneberry subgroup at 0.7 ppm,

5. PP 2E6422 proposed establishment of tolerances for grape at 0.6 ppm, grape juice at 1.2 ppm, and raisin at 0.6 ppm. The petition was amended to propose tolerances for grape at 0.50 ppm; and grape, raisin at 0.70 ppm. The Agency determined that a tolerance for grape juice is not needed.

6. PP 2E6370 proposed establishment of a tolerance for peanut at 0.02 ppm,

7. PP 0F6115 proposed to increase the established tolerances for cattle meat, meat byproducts, fat, milk and milk fat. The increased tolerances are needed in support of proposed registration for direct application to beef and dairy cattle for insect control. Tolerances were proposed for cattle, meat at 0.45 ppm; cattle, meat byproducts at 2.25 ppm; cattle, fat at 5.75 ppm; milk at 0.75 ppm; and milk, fat at 8.0 ppm. The petition was subsequently revised to propose tolerances for cattle, meat at 0.50 ppm; cattle meat byproducts at 2.0 ppm; cattle, fat at 6.5 ppm; milk at 2.5 ppm; and milk, fat at 27 ppm.

Existing tolerances under § 180.495(a) for beet, garden, roots at 0.10 ppm, beet, sugar, roots at 0.10 ppm, and tuberous and corm vegetables (crop group 1C) at 0.02 ppm are no longer needed and will be removed. They are replaced with the new tolerance for vegetable, root and tuber, group at 0.10 ppm. Existing tolerances for section 18 emergency exemption under §180.495(b) for beet, sugar at 0.020 ppm; beet, sugar, molasses at 0.25 ppm; peanut at 0.02 ppm; milk, whole at 2.0 ppm and milk, fat at 20.0 ppm are also not needed and will be removed. Tolerances established by this regulation under §180.495 (a) for the vegetable, root and tuber, group at 0.10 ppm; beet, sugar, molasses at 0.75 ppm; peanut at 0.02 ppm; milk at 2.5 ppm; and milk, fat at 27 ppm obviate the need for these section 18 emergency exemptions.

Spinosad is a fermentation product of Saccharopolyspora spinosa. The product consists of two related active ingredients: Spinosyn A (Factor A; CAS No. 131929–60–7) or 2-[(6-deoxy-2,3,4-tri-O-methyl-″N-L-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione; and Spinosyn D (Factor D; CAS No. 131929–63–0) or 2-[(6-deoxy-2,3,4-tri-O-methyl-″N-L-manno-pyranosyl)oxy]-13-[[5-(dimethyl-amino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a, 16b-tetradecahydro-4,14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione. Typically, the two factors are present at an 85:15 (A:D) ratio.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on

Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of spinosad on fig at 0.10 ppm; herb, fresh, subgroup at 3.0 ppm; herb, dried, subgroup at 22 ppm; vegetable, root and tuber, group at 0.10 ppm; caneberry subgroup at 0.7 0 ppm; grape at 0.50 ppm; grape, raisin at 0.70 ppm; peanut at 0.02 ppm; beet, sugar, molasses at 0.75 ppm; cattle, meat at 0.50 ppm; cattle, meat byproducts at 2.0 ppm; cattle, fat at 6.5 ppm; milk at 2.5 ppm and milk, fat at 27 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by spinosad are discussed in the following Table 1 as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90-Day oral toxicity rodents—mouse	NOAEL = 7.5 mg/kg/day in males and females. LOAEL = 22.5 mg/kg/day in males and females; based on cytoplasmic vacuolation of lymphoid organs, liver, kidney, stomach, female reproductive tract, and epididymis. Other tissues less severely affected are heart, lung, pancreas, adrenal cortex, bone marrow, tongue, and pituitary gland.
870.3100	90-Day oral toxicity rodents—rat	NOAEL = 33.9 mg/kg/day in males; 38.8 mg/kg/day in females LOAEL = 68.5 mg/kg/day in males; 78.1 mg/kg/day in females based on adrenal cortical vacuolation in males, lymph node histiocytosis in both sexes.
870.3100	90-Day oral toxicity rodents—rat	NOAEL = 42.7 mg/kg/day in males; 52.1 mg/kg/day in females, highest dose tested (HDT). LOAEL = Not observed in males and females.
870.3150	90-Day oral toxicity nonrodents—dog	NOAEL = 4.89 mg/kg/day in males; 5.38 mg/kg/day in females LOAEL = 9.73 mg/kg/day in males; 10.47 mg/kg/day in females based on microscopic changes in a variety of tissues, clinical signs of toxicity, decreases in mean body weights and food consumption and biochemical evidence of anemia and possible liver damage.
870.3200	Repeated dose dermal toxicity—rabbit (21 days)	NOAEL = 1,000 mg/kg/day in males and females (HDT). LOAEL = Not observed.
870.3700	Prenatal developmental in rodents—rat	Maternal NOAEL = 200 mg/kg/day (HDT). LOAEL = Not observed. Developmental NOAEL = 200 mg/kg/day (HDT). LOAEL = Not observed.
870.3700	Prenatal developmental in nonrodents—rabbit	Maternal NOAEL = 50 mg/kg/day (HDT). LOAEL = Not observed. Developmental NOAEL = 50 mg/kg/day (HDT). LOAEL = Not observed.
870.3800	Reproduction and fertility effects—rat	Parental/systemic NOAEL = 10 mg/kg/day . LOAEL = 100 mg/kg/day based on increases in heart, kidney, liver, spleen, and thyroid weights (both sexes), corroborative histopathology in the spleen and thyroid (both sexes), heart and kidney (males only), and histopathologic lesions in the lungs and mesenteric lymph nodes (both sexes), stomach (females only), and prostate. Reproductive NOAEL = 10 mg/kg/day. LOAEL = 100 mg/kg/day based on increased incidence of dystocia and/or vaginal bleeding after parturition with associated increases in mortality in the dams. Offspring NOAEL = 10 mg/kg/day. LOAEL = 100 mg/kg/day based on decreases in litter size, survival and body weights.
870.4100	Chronic toxicity—dog	NOAEL = 2.68 mg/kg/day in males, 2.72 mg/kg/day in females. LOAEL = 8.46 mg/kg/day in males; 8.22 mg/kg/day in females based on increases in serum alanine aminotransferase, aspartate aminotransferase, and triglycerides levels, and the presence of tissue abnormalities, including vacuolated cell aggregations, arteritis, and glandular cell vacuolation (parathyroid).

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.4200	Carcinogenicity— mouse	NOAEL = 11.4 mg/kg/day in males, 13.8 mg/kg/day in females. LOAEL = 50.9 mg/kg/day in males; 67.0 mg/kg/day in females based on decreased weight gains, increased mortality, the hematologic effects, and the gross finding of increased thickening of the gastric mucosa in females and the histologic changes in the stomach of males. No evidence of carcinogenicity.
870.4200	Carcinogenicity—mouse	NOAEL not established. LOAEL = 1.1 mg/kg/day in males; 1.3 mg/kg/day in females. No evidence of carcinogenicity.
870.4300	Chronic/carcinogenicity—rat	NOAEL = 9.5 mg/kg/day in males, 12.0 mg/kg/day in females. LOAEL = 24.1 mg/kg/day in males; 30.3 mg/kg/day in females based on vacuolation of the epithelial follicular cells of the thyroid in both sexes. No evidence of carcinogenicity.
870.5300	Mouse lymphoma cell/ mammalian activation gene forward mutation assay	In a forward mutation assay using mouse lymphoma cells, spinosad did not induce forward mutations in mouse lymphoma L5178Y Tk+/- cells at concentrations of 0, 1, 5, 10, 15, 20, or 35 μg/ml without metabolic activation or at concentrations of 15 through 50 μg/ml with metabolic activation.
870.5375	*In vitro* mammalian cytogenetic assay	In a chromosomal aberrations assay, spinosad did not increase the number of Chinese hamster ovary (CHO) cells with chromosome aberrations at concentrations of 20, 26, or 35 μg/ml without metabolic activation or at concentrations of 100, 250, or 500 μg/ml with metabolic activation.
870.5385	Micronucleus assay	In a mouse micronucleus test, spinosad did not increase the frequency of micronuclei in replicate assays with bone marrow cells from ICR mice treated with doses of 0, 500, 1,000, or 2,000 mg/kg/day for 2 consecutive days.
870.5550	Unscheduled DNA Synthesis	In the unscheduled DNA synthesis assay using primary rat hepatocytes, Spinosad did not induce unscheduled DNA synthesis (UDS) in adult rat hepatocytes *in vitro* at concentrations of 0.01 to 5 μg/ml. Concentrations from 10 to 1,000 μg/ml of XDE-105 were cytotoxic.
870.6200	Acute neurotoxicity–rat	NOAEL = 2,000 mg/kg in males and females (HDT). LOAEL = Not established in both sexes.
870.6200	Repeat dose neurotoxicity—rat	NOAEL = 42.7 mg/kg/day in males; 52.1 mg/kg /day in females (HDT). LOAEL = Not established in both sexes.
870.6200	Repeat dose neurotoxicity—rat	NOAEL = 46.0 mg/kg/day in males; 57.0 mg/kg/day in females (HDT). LOAEL = Not established in both sexes.
870.7485	Metabolism and pharmacokinetics—rat	At high (100 mg/kg) and single or multiple low (10 mg/kg) doses, there are no major differences in the bioavailability, routes or rates of excretion or metabolism of ^{14}C–XDE–105 (Factor A) following oral administration. The feces were the major route of excretion (82 to 87% of the doses at 168 hours after dosing), and ~7–10% of the dose was excreted in the urine. Approximately 70–80% of the dose was absorbed with ~20% of the dose eliminated unabsorbed in the feces. Blood levels of ^{14}C after the single and multiple 10 mg/kg doses were highest at 1 hour in both sexes. At 168 hour after administration of the low dose, the kidney, liver and fat of males and females had higher levels than other tissues. In the high dose group however, the adrenals (females only), kidney, lymph nodes, fat, and thyroids had higher levels than other tissues. The total radioactivity remaining in the tissues and carcass of the low and high dose animals was <0.6% and <3% of the administered dose, respectively. The primary metabolites excreted were identified as the glutathione conjugates of the parent and O-demethylated XDE-105 (Factor A). Metabolites in the tissues were characterized as the — and O-demethylated (Factor A). The absorption, disposition, and elimination of ^{14}C–XDE–105 (Factor A) demonstrated no appreciable differences based on, dose or repeated dosing.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.7485	Metabolism and pharmacokinetics—rat	Results of these experiments indicated that at 100 mg/kg dose, the feces were the major route of excretion (84 to 92% of the dose at 168 hours after dosing), and 3–5% of the dose was excreted in the urine. Greater than 68% of the administered radioactivity was recovered in the feces within the first 24 hours following dosing. The excretion kinetics was biphasic with the ″ and β excretion halftimes ($t_{\frac{1}{2}}$) of approximately 6 and 30 hours, respectively. The primary metabolites excreted were identified as the glutathione conjugates of the parent and O-demethylated XDE-105 (Factor D). Metabolites in the tissues were characterized as the — and O-demethylated (Factor D). The absorption, disposition, and elimination of ^{14}C–XDE–105 (Factor D) demonstrated no appreciable differences based on, dose or repeated dosing.
870.7485	Metabolism and pharmacokinetics—rat	The feces contained from 23 to 55% of the dose (an average of 34%), and the bile had an average of approximately 36% (range of 28 to 40%) of the administered radioactivity. Approximately 21% of the dose was found in the tissues and carcass (range of 12 to 26%). The urine and CO_2 accounted for 3.3 and <0.1% of the dose. The bile excretion rate results suggested an uptake phase for the first 4 hour after dosing which preceded a biphasic decrease in the biliary excretion rate. The maximum rate of bile excretion was −644 :g equivalents per hour at 2–4 hour; then the rate decreased to −123 :g equivalents per hour at the 12–24 hour interval. The results of the study suggested that metabolites in the bile included the glutathione conjugates of the unchanged form, as well as — and O-demethylated forms of XDE–105 (Factor D).

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for spinosad used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR SPINOSAD FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary	Not applicable	Not applicable	There were no effects observed in oral toxicity studies including oral developmental toxicity studies in rats and rabbits that could be attributable to a single dose (exposure). Therefore, a dose and endpoint were not selected for this risk assessment.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR SPINOSAD FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Chronic Dietary all populations	NOAEL = 2.7 mg/kg/day UF = 100 Chronic RfD = 0.027 mg/kg/day	FQPA SF = 1x cPAD = chronic RfD FQPA SF= 0.027 mg/kg/day	Chronic Toxicity Study in Dogs LOAEL = 8.22 mg/kg/day based on the occurrence of vacuolation in glandular cells (parathyroid) and lymphatic tissues, arteritis, and increases in serum alanine aminotranferase, and aspartate aminotransferase, and triglyceride levels.
Incidental Oral (Short-Term, 1 to 30 days)(Residential)	NOAEL = 4.9 mg/kg/day	FQPA SF = 1x LOC for MOE = 100	Subchronic Feeding Study in Dogs LOAEL = 9.73 mg/kg/day based on microscopic changes in multiple organs, clinical signs of toxicity, decreases in mean body weights and food consumption and biochemical evidence of anemia and possible liver damage.
Incidential Oral (Intermediate-Term, 1 to 6 months)(Residential)	NOAEL = 2.7 mg/kg/day	FQPA SF = 1x LOC for MOE = 100	Chronic Toxicity Study in Dogs LOAEL = 8.22 mg/kg/day based on vacuolation in glandular cells (parathyroid) and lymphatic tissues, arteritis, and increases in serum alanine aminotransferase, aspartate aminotransferase, and triglyceride levels.
Dermal (Any time period) (Residential)	Not applicable.	Not applicable.	Short-, Intermediate-, and Long-Term dermal risk assessments were not performed because: (1) Lack of concern for pre and/or post natal toxicity; (2) the combination of molecular structure and size as well as the lack of dermal or systemic toxicity at 1000 mg/kg/day in a 21-day dermal toxicity study in rats which indicates poor dermal absorption; and (3) the lack of long-term exposure based on the current use pattern.
Inhalation (Short-Term, 1-30 days) (Residential)	Oral NOAEL = 4.9 mg/kg/day (absorption = 100%)	FQPA SF = 1x LOC for MOE = 100	Subchronic Feeding Study in Dogs LOAEL = 9.73 mg/kg/day based on microscopic changes in a multiple organs, clinical signs of toxicity, decreases in mean body weights and food consumption and biochemical evidence of anemia and possible liver damage.
Inhalation (Intermediate-Term, 1-6 months)(Residential)	Oral NOAEL = 2.7 mg/kg/day (absorption = 100%)	FQPA SF = 1x LOC for MOE = 100	Chronic Toxicity Study in Dogs LOAEL = 8.22 mg/kg/day based on vacuolation in glandular cells (parathyroid) and lymphatic tissues, arteritis, and increases in serum alanine aminotransferase, aspartate aminotransferase, and triglyceride levels.
Inhalation (Long-Term, >6 months) (Residential)	Oral NOAEL = 2.7 mg/kg/day (absorption = 100%)	FQPA SF = 1x LOC for MOE = 100	Chronic Toxicity Study in Dogs LOAEL = 8.22 mg/kg/day based on vacuolation in glandular cells (parathyroid) and lymphatic tissues, arteritis, and increases in serum alanine aminotransferase, aspartate aminotransferase, and triglyceride levels.
Cancer (oral, dermal, inhalation)	Not applicable.	Not applicable.	Spinosad is classified as a ''Not Likely'' carcinogen.

*The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.495) for the residues of spinosad, in or on a variety of raw agricultural commodities. Spinosad is registered for use on a large number of agricultural commodities. Due to Section 18 emergency exemption use for control of Mediterranean fruit fly, tolerances for residues of spinosad have been established at 0.02 ppm for all agricultural commodities not covered by other pesticide tolerances. Risk assessments were conducted by EPA to assess dietary exposures from spinosad in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An endpoint was not identified for acute dietary exposure and risk assessment because no effects were observed in oral toxicity studies including developmental toxicity studies in rats or rabbits that could be attributable to a single dose (exposure). Therefore, an acute dietary exposure assessment was not performed.

ii. *Chronic exposure.* Spinosad chronic dietary exposure assessments were conducted using the Dietary Exposure Evaluation Model (DEEM™) software Version 7.76, which incorporates consumption data from USDA's 1989–1992– nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The chronic dietary (food only) analysis represents a moderately refined estimate of dietary exposure to spinosad due to the use of default

processing factors, percent crop treated estimates for commodities having previously registered uses, and anticipated residues for meat and milk.

iii. *Cancer.* Spinosad has been classified as ''not likely to be carcinogenic in humans'' based on the results of a carcinogenicity study in mice and the combined chronic toxicity and carcinogenicity study in rats. Therefore, a cancer risk assessment was not performed.

iv. *Anticipated residue and percent crop treated information.* Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used percent crop treated (PCT) information as follows:

Almond 5 %; apple 28%; apricot 5%; avocado 5%, bean, snap 9%; broccoli 62%; cabbage 32%; cauliflower 54%; celery 78%; collards 24%; cherry 5%; eggplant 14%; grapefruit 1%; grape, wine 1%; kale 32%; lemon 11%; lettuce, head 59%; Lettuce, other 42%; mustard greens 17%; orange 6%; peach 4%; pepper 45%; pistachio 1%; prune/plum 5%; spinach 32%; pumpkin 1%; squash 1%; sweet corn 1%; tangerine 6%; turnip, greens 6%; tomato, fresh 30%; tomato, processed 2%; watermelon 1%; cotton 3%; dry bean/pea 1%; peanut 1%; potato 1%; wheat, winter 1%.

The Agency believes that the three conditions listed in this Unit have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which spinosad may be applied in a particular area.

2. *Dietary exposure from drinking water.* Spinosad and its degradates are not very persistent and are relatively immobile. The potential for its residues to leach to groundwater and runoff to surface water is very low. Spinosad (containing Factors A and D) is expected to dissipate rapidly in the environment with a low potential to leach or runoff to surface water. Slow metabolic degradation was observed only in flooded sediment (half-lives 161–250 days in the laboratory, >25 days outdoors). Transformation products (Factor B and N-demethyl spinosad Factor D) are persistent (half-lives >6 months) in aerobic soil metabolism studies, but are relatively immobile.

The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for spinosad in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of spinosad.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water.

DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to spinosad they are further discussed in the aggregate risk sections below.

Based on the First and SCI-GROW models the estimated environmental concentrations (EECs) of spinosad for chronic exposures is estimated to be 2.3 parts per billion (ppb) for surface water and 0.037 ppb for ground water. The EECs for spinosad are based on application of the insecticide to turf at a maximum of four applications at a rate of 0.41 pound active per acre per application.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Spinosad is currently registered for use on residential turf and ornamentals to control a variety of insect pests. The registered residential products for spinosad are Conserve SC Turf and Ornamental (EPA Reg No. 62719–291) and Conserve Fire Ant Bait (EPA Reg No. 62719–304).

Conserve Fire Ant Bait is a ready-to-use granular formulation that may be applied by homeowners. For adults, residential exposures may result from dermal and inhalation exposure while applying Conserve Fire Ant Bait and/or from dermal contact with treated turf. However, dermal post-application exposure is not of concern since no toxicological endpoint was established for dermal exposure. Inhalation exposure is not expected due to the low vapor pressure of spinosad and because the homeowner product is formulated as a granular. Post-application exposure to toddlers was not assessed for the Conserve Fire Ant Bait product since children are not likely to ''habit'' lawn areas where fire ant mounds are present.

Conserve SC is labeled for use on turfgrass and ornamentals by commercial applicators. Since this product will be applied by commercial applicators, homeowner applicator exposure was not assessed. For toddlers, dermal and non-dietary oral post-application exposures may result from dermal contact with treated turf as well as hand-to-mouth transfer of residues from turfgrass. Since dermal post-application exposure is not of concern, only hand-to-mouth, object-to-mouth and incidential ingestion of soil exposures for the turf and ornamental uses were performed. The average aerobic soil metabolism half-life of spinosad (containing factors A and D) is 13–14 days. For the intermediate-term duration, typical lawn maintenance practices, such as mowing and watering, are expected to expedite the dissipation of spinosad on turfgrass. Since residue on turf that is available for transfer after day 30 is expected to be negligible, intermediate-term post-application incidental oral exposures were not assessed.

The Agency developed exposure formulas and estimated doses to theoretically assess residential post-application incidental oral exposure scenarios including: (1) Hand-to-mouth, (2) object-to-mouth (turfgrass), and (3) incidental ingestion of soil. The resulting incidental oral ingestion MOEs from residential use of spinosad on turf are as follow:

- MOE for oral hand-to-mouth activities on treated lawns is 800 for short-term (1-30 days).
- MOE for oral object-to-mouth (turfgrass) from treated lawns is 3300 for short-term.
- MOE for incidental ingestion of soil from treated lawns is 240,000 for short-term.
- Combined Incidental Oral MOE (hand-to-mouth, object-to-mouth, and soil ingestion) is 640. All MOEs are below EPA's level of concern.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether spinosad has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, spinosad does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that spinosad has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There is no indication of increased susceptibility of rat and rabbit fetuses to *in utero* and/or postnatal exposure.

3. *Conclusion*. There is a complete toxicity data base for spinosad and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10x safety factor to protect infants and children should be removed. This recommendation is based on:

i. There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with spinosad, and there is no evidence of increased susceptibility of young rats in the reproduction study with spinosad;

ii. There are no residual uncertainties identified in the exposure databases; the dietary food exposure assessment (chronic only; no acute endpoint was identified) is refined using Anticipated Residues calculated from field trial data and available percent crop treated information (100% crop treated is assumed for proposed new uses) and,

iii. The dietary drinking water exposure is based on conservative modeling estimates,

iv. OPP's Health Effect Division Residential Standard Operating Procedures were used to assess post-application exposure to children as well as incidental oral exposure of toddlers, so these assessments do not underestimate the exposure and risks posed by spinosad,

v. A developmental toxicity study is not required.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a

point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOCS values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOCS, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOCS.

A DWLOCS will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOCS is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Acute aggregate risk consists of the combined dietary exposures from food and drinking water sources. The total exposure is compared to the acute RfD. An acute RfD was not identified since no effects were observed in oral toxicity studies that could be attributable to a single dose. Therefore, the Agency concludes that there is a reasonable certainty of no harm from acute aggregate exposure to spinosad.

2. *Chronic risk*. Using the exposure assumptions described in unit C for chronic exposure, EPA has concluded that exposure to spinosad from food will utilize 30% of the cPAD for the U.S. population, 41% of the cPAD for infant <1 year old and 69% of the cPAD for children 1-6 years old (subpopulation at greatest exposure). Based the use pattern, chronic residential exposure to residues of spinosad is not expected. In addition, there is potential for chronic dietary exposure to spinosad in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO SPINOSAD

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOCS (ppb)
U.S. Population	0.027	30	2.3	0.037	660
All infants (<1 year old)	0.027	41	2.3	0.037	160
Children 1-6 years old	0.027	69	2.3	0.037	85
Children 7-12	0.027	45	2.3	0.037	150
Female 13-50	0.027	24	2.3	0.037	620

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Spinosad is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for spinosad.

Using the exposure assumptions described in unit C for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 600 for the U.S. Population, 260 for all infants <1 year old, 190 for children 1–6 years old (greatest risk subpopulation) and 250 for children 7–12 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of spinosad in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO SPINOSAD

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOCS (ppb)
U. S. Population	600	100	2.3	0.037	1400
All infants <1 year old	260	100	2.3	0.037	300
Children 1-6 years old	190	100	2.3	0.037	230
Children 7-12 years old	250	100	2.3	0.037	290
Females 13-50 years	760	100	2.3	0.037	1300

4. *Aggregate cancer risk for U.S. population*. Spinosad has been classified as ''not likely to be carcinogenic in humans'' based on the results of a carcinogenicity study in mice and the combined chronic toxicity

and carcinogenicity study in rats. Therefore, spinosad is not expected to pose a cancer risk to humans.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to spinosad residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology using high pressure liquid chromatography with ultraviolet detector (HPLC/UV) is available to enforce the tolerances in plants. Adequate livestock methods are available for tolerance enforcement. Method RES 94094 (GRM 95.03) is an HPLC/UV method suitable for determination of spinosad residues in ruminant commodities. Method GRM 95.03 has undergone successful independent laboratory validation (ILV) and EPA laboratory validation, and has been forwarded to FDA for inclusion in PAM Volume II. Method GRM 95.15 is another HPLC/UV method suitable for determination of spinosad residues in poultry commodities. This method has been forwarded to FDA for inclusion in PAM Volume II. Method RES 95114, an immunoassay method for determination of spinosad residues in ruminant commodities, underwent a successful ILV and EPA laboratory validation. It has been submitted to FDA for inclusion in PAM Volume II. The methods may be requested from: Paul Golden, US EPA/OPP/BEAD/ACB, Environmental Science Center, 701 Mapes Road, Fort Meade, MD 20755–5350; telephone number: (410) 305–2960; FAX (410) 305–3091; e-mail address: RAM Mailbox.

B. International Residue Limits

No Codex, Canadian, or Mexican maximum residue limits (MRLs) have been established for residues of spinosad on the caneberry subgroup, root and tuber vegetables, the herb subgroup, fig, grape, peanut, or livestock commodities.

V. Conclusion

Therefore, tolerances are established for residues of spinosad, in or on fig at 0.10 ppm; herbs, fresh, subgroup at 3.0 ppm; herbs, dried, subgroup at 22 ppm; vegetable, root and tuber, group at 0.10 ppm; caneberry subgroup at 0.70 ppm; grape at 0.50 ppm; grape, raisin at 0.70 ppm; peanut at 0.02 ppm; beet, sugar, molasses at 0.75 ppm; cattle, meat at 0.50 ppm; cattle, meat byproducts at 2.0 ppm; cattle, fat at 6.5 ppm, milk at 2.5; and milk, fat at 27 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0195 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 26, 2002.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0195, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any

CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 23, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.495 is amended as follows:

a. In the table to paragraph (a) by alphabetically adding the entries for beet, sugar, molasses; caneberry subgroup; fig; grape; grape, raisin; herb, dried, subgroup; herb, fresh, subgroup; milk; peanut; vegetable, root and tuber, group;

b. By revising the entries for cattle, fat; cattle, meat; cattle, meat byproducts; and milk, fat; and

c. By removing the entries for beet, garden, roots; beet, sugar, roots; milk, whole; and tuberous and corm vegetables (crop subgroup 1C).

d. In the table to paragraph (b) by removing the entries for beet, sugar; beet, sugar, molasses; milk, whole; milk, fat; and peanut.

§180.495 Spinosad; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
* *	*	* *
Beet, sugar, molasses	0.75	None
* *	*	* *
Caneberry subgroup	0.70	None
* *	*	* *
Cattle, fat	6.5	None
Cattle, meat	0.50	None
Cattle, meat byproducts	2.0	None
* *	*	* *
Fig	0.10	None
* *	*	* *
Grape	0.50	None
Grape, raisin	0.70	None
* *	*	* *
Herb, dried, subgroup	22	None
Herb, fresh, subgroup	3.0	None
* *	*	* *
Milk	2.5	None
Milk, fat	27	None
* *	*	* *
Peanut	0.02	None
* *	*	* *
Vegetable, root and tuber, group	0.10	None
* *	*	* *

* * * * *

[FR Doc. 02–24484 Filed 9–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0232; FRL–7200–2]

Glyphosate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of glyphosate in or on animal feed, nongrass group; grass, forage, fodder and hay, group and adds the potassium salt of glyphosate to the tolerance expression. Monsanto Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective September 27, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0232, must be received on or before November 26, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0232 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins (PM 25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5697; e-mail address: *Tompkins.Jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet homp page at *http://www.epa.gov/*. To access this document, on the home page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0232. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

In the **Federal Register** of April 17, 2002 (FR 67 18894) (FRL–6830–5), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of pesticide petitions (PP 0F06130, 0F06195, and 0F06273) by Monsanto, 600 13th St., NW., Suite 660, Washington, DC 20005.

The notice included a summary of the petition prepared by Monsanto, the registrant. Comments received in the public docket with respect to the Notice of Filing Pesticide Petitions to Establish a Tolerance for Glyphosate in or on Food (April 17, 2002, 67 FR 18894) are discussed in the section below.

III. Response to Comments

The Northwest Coalition for Alternatives to Pesticides (NCAP) researches and cites studies that are not included in corporate evaluations of their products, and summarizes them in the Journal of Pesticide Reform. The following comments submitted to the Agency by Jill Davies/RiverCare, Martha T. Franks/Taylor Farms and Jeff Schahczenski/Executive Director/ Western Sustainable Agriculture Working Group cite the opinions of the NCAP concerning the information contained within the April 17, 2002 **Federal Register** for glyphosate.

A. Residue Chemistry

The Notice states:

1. *Plant metabolism*. The nature of the residue in plants is adequately understood and consists of the parent, glyphosate and its metabolite aminomethyl-phosphonic acid (AMPA). Only the glyphosate parent is to be regulated in plant and animal commodities since the metabolite AMPA is not of toxicological concern in food.

Comment: The metabolite AMPA is of toxicological concern. In subchronic (midterm) tests on rats, AMPA caused an increase in the activity of an enzyme, lactic dehydrogenase, in both sexes; a decrease in liver weights in males at all doses tested; and excessive cell division in the lining of the urinary bladder in both sexes.

Agency response. The subchronic toxicity of AMPA has been investigated in rats and dogs. Treatment-related effects, such as urinary tract irritation, were observed in rats only at very high dosage levels. Gross and histopathologic examinations of these animals did not reveal effects in any other organ. No toxicities occurred in dogs at any dosage level tested. Based on these results, the Agency concluded that the metabolite of glyphosate, AMPA, is not of toxicological concern because the effects observed in subchronic toxicity studies cited above were: (1) Not dose-related, and/or (2) not considered biologically significant.

Comment: The mode of action of the residue in plants is not adequately understood. It is known that glyphosate is a systemic and non-selective herbicide that kills grasses, sedges, and broad-leaved plants, but exactly how it works is not well understood.

Agency response. Residue chemistry/ plant metabolism studies for pesticidal active ingredients are not designed to determine the mode-of-action in plants, but instead are designed to determine the metabolic fate, including the identification of plant metabolites of the active ingredient, when it is systemically present in plants.

Although not relevant to nature of the residue studies, the primary mode of action for glyphosate is well understood and documented. Glyphosate is a member of the phosphono amino acid class of chemicals. These compounds are foliar-applied herbicides that interfere with normal plant amino acid synthesis, resulting in the inhibition of nucleic acid metabolism and protein synthesis. Specifically, glyphosate blocks the activity of 5-enolpyruvylshikimate 3-phosphate synthase (EPSP synthase), an enzyme that is involved in aromatic amino acid biosynthesis (essential for growth) and produced only by green plants. This pathway does not occur in animals, which must eat plants to obtain these essential amino acids. Consequently, glyphosate is toxic to all green plants and essentially nontoxic to other living organisms.

B. Toxicological Profile

The Notice states:

1. *Acute toxicity*. Several acute toxicology studies place technical-grade glyphosate in Toxicity Category III and Toxicity Category IV.

Comment: This is correct, and Toxicity Category III means caution. But most toxicology studies are conducted using glyphosate alone, not the formulations that are in commercial products, which contain so-called inert ingredients. Roundup, which contains glyphosate and the surfactant POEA, is three times as acutely toxic to rats as glyphosate alone. This deficiency in regulation needs to be corrected.

Agency response. This action establishes a tolerance for glyphosate, not the inert polyethylated tallow amines (POEA). POEA is regulated separately under FFDCA and has been approved by the Agency. Additionally, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, registration process, EPA evaluates the potential risks posed by inert ingredients such as the POEA. The Agency requires a full disclosure of inert ingredients for each Roundup formulation to determine acute toxicity such as acute oral, eye, skin, inhalation, and dermal sensitization. The combined effects of active and inert ingredients on a product's acute toxicity properties are reviewed by the Agency and used to define the appropriate personal protective equipment (PPE) and precautionary statements for each pesticide end-use product label that will provide adequate protection to users.

2. *Genotoxicity (mutagencicty)—Comment:* The FR Notice describes assays showing that glyphosate does not cause genetic damage, but other studies have shown that both glyphosate and its commercial products are mutagenic, and the commercial products are more potent mutagens than glyphosate.

Agency response. The mutagenicity studies referred to by the commenters is the *Journal of Pesticide Reform* (JPR), a magazine produced by the Northwest Coalition for Alternatives to Pesticides (NCAP) based in Eugene, OR. JPR has compiled and updated fact sheets on a number of pest-control products, including glyphosate (the active ingredient in Roundup agricultural herbicides).

Based on the negative responses observed in well validated assays conducted according to the required test guidelines and in compliance with USEPA Good Laboratory Practice Standards, the Agency concluded that the active ingredient pesticide, glyphosate, is neither mutagenic or clastogenic.

Several studies have tested herbicide formulations, including Roundup, for mutagenic/genotoxic potential. Although positive responses have been reported, the testing systems used in the cited studies may not be adequate for regulatory purposes for one or more of the following reasons: (1) Un-validated test systems that do not have established predictability based on broad experience using substances of known positive and negative genotoxicity/ mutagenicity; (2) undocumented and uncharacterized test materials; (3) administered doses that cannot be correlated to expected exposures; (4) routes of exposure that vary from the required test protocols; (5) results that address endpoints which do not have a clear accepted relationship to human disease; and/or (6) deficient methodologies.

3. *Reproductive and developmental toxicity—Comment:* A study in Ontario found that father's (mostly farmers) use of glyphosate was associated with an increase in miscarriages and premature births in farm families. Laboratory studies on rats and rabbits have also demonstrated a number of effects from glyphosate on reproduction.

Agency response. Data from studies conducted according to accepted testing methods and reviewed by the Agency, demonstrate that glyphosate is not a

reproductive or developmental toxicant. Glyphosate was evaluated in two multigenerational rat reproduction studies and developmental toxicity studies in rats and rabbits. Results from these studies did not indicate any adverse effects on the animals' ability to mate, conceive, carry or deliver normal offspring. Based on the findings from developmental toxicity studies in rats and rabbits, it can be concluded that glyphosate does not produce birth defects and developmental toxicity is only seen at maternally toxic doses.

The developmental toxicity of the surfactant POEA has been evaluated and found not to be a teratogen or a developmental toxicant in rats. Subchronic toxicity studies with the surfactant and/or Roundup herbicide have also been conducted in rats, rabbits, and dogs. In these studies, gross and microscopic pathology examinations were conducted on several reproductive tissues including ovaries, uterus, testes, and epididymis. No developmental effects or changes in reproductive tissues were found in any of these evaluations. There is no evidence that the surfactant or Roundup herbicide adversely impacts reproductive function.

4. *Subchronic (medium-term) and chronic (long-term) toxicity studies on rats and mice—Comment.* Once again, studies (both subchronic and chronic) other than those cited by Monsanto reflect toxicity from glyphosate, and commercial products are more toxic than just glyphosate.

Agency response. The Agency has determined that the existing data base for glyphosate is adequate according to testing guideline requirements for a food-use registration. There is high confidence in the quality of the existing studies and the reliability of the toxicity endpoints identified for use in risk assessments; there are no data gaps. Based on evaluation of the existing glyphosate data base, the Agency has concluded that the use of glyphosate and glyphosate products do not pose unreasonable risks or adverse effects to humans.

The potential toxicity of POEA has been assessed in subchronic oral studies with rats and dogs. Roundup herbicide has also been evaluated for possible subchronic effects in an inhalation study with rats, a dermal study in rabbits, and an oral study with cattle. It was anticipated most observed effects would be related to the surface-active properties and associated irritation potential of surfactants. These studies confirm that irritation at the site of contact was the primary finding with the test material. In the oral studies conducted with POEA and Roundup, effects secondary to gastrointestinal irritation (emesis and diarrhea) were noted; decreased food consumption and decreased body weight gain. However, these effects were not dose-related in rats and dogs. In the study conducted with cattle in which slight decreases in body weight occurred, dosages of Roundup herbicide were 30 to 100 times greater than the dose typically applied to foliage for agricultural weed control purposes. There was no systemic toxicity in the inhalation and dermal studies conducted with Roundup. No indication of specific target organ toxicity was observed in any of the subchronic toxicity studies.

5. *Animal metabolism.* The Notice states:

> The qualitative nature of the residue in animals is adequately understood.

Comment: This is not true. There are a multitude of established effects on animals, including humans, and the mode of action is not understood at all. Roundup kills beneficial insects (parasitoid wasps, lacewings, ladybugs) and other arthropods that are important in humus production and soil aeration, and affect growth and survival of earthworms. Acute toxicities for fish LC_{50}, the lethal concentration killing 50% of a population of test animals) range from 2 ppm to 55 ppm and increase with increases in water temperature.

Agency response. Animal metabolism studies for pesticide active ingredients do not evaluate toxicological effects, but instead are designed to determine the fate of the molecule within a mammalian metabolic system. The animal metabolism data reviewed by the Agency for glyphosate are adequate and the qualitative nature of the residue in animals is understood.

Environmental consequences of pesticide use are considered in the FIFRA registration process. Based on the current toxicity data, application rates and observance of risk management measures for the active ingredient glyphosate, EPA has determined that the risks for birds, mammals, aquatic organisms, bees and invertebrates are minimal. Glyphosate is no more than slightly toxic to fish and wild birds, and practically non-toxic to aquatic invertebrate animals. There is a very low potential for the compound to build up in the tissues of aquatic invertebrates and other aquatic organisms such as fish. The Roundup formulation is moderately to slightly toxic to freshwater fish and aquatic invertebrate animals. Glyphosate is nontoxic to honeybees. This active ingredient pesticide as well as surfactants in the formulated products have no known effect on soil microorganisms. The reported contact lethal dose (LD_{50}) for earthworms in soil are greater than 5,000 parts per million (ppm) for both the glyphosate trimethylsulfonium salt and Roundup.

6. *Cancer.* Unit C.3.ii. of the Notice states:

> There is no evidence of carcinogenic potential.

Comment: This is false. A recent Swedish Study of hairy cell leukemia (HCL), a form of non-Hodgkin's lymphoma cancer, found that people who were occupationally exposed to glyphosate herbicides had a threefold higher risk of HCL. A similar study of people with non-Hodgkin's lymphoma found exposure to glyphosate was associated with an increase risk of about the same size.

Agency response. The commenters are referring to two epidemiology studies published by Sweden. This type of epidemiologic evaluation does not establish a definitive link to cancer. Furthermore, this information has limitations because it is based solely on unverified recollection of exposure to glyphosate-based herbicides.

The carcinogenic potential of glyphosate has been evaluated in acceptable studies conducted in rats and mice. In June of 1991, the Agency concluded, following a thorough review of all available toxicity data, that glyphosate should be classified in Category E--Evidence of Non-carcinogenicity in Humans. This cancer classification was based upon the observation of no treatment-related tumors at any dose level with glyphosate tested up to the limit in rats and up to dose levels higher than the limit dose in mice, and the lack of evidence of mutagenicity/genotoxicity for glyphosate.

C. Exposure and Risk Assessments

1. *Dietary exposure.* Tolerances have been established (40 CFR 180.364) for the residues of glyphosate in or on a variety of food and feed commodities. The petitioner proposes to add potassium salt to this list of acceptable salt forms to which the tolerances apply, and to amend or add a number of new animal feed tolerances and one food tolerance. Tolerances are also established for animal organs that may be consumed by humans (kidney at 4.0 ppm and liver at 0.5 ppm), and for poultry meat at 0.1 ppm, eggs at 0.05 ppm, and poultry meat by-products at 1.0 ppm, based on animal-feeding studies and reasonable worst-case livestock diets.

The Notice states:

This analysis showed that the existing livestock tolerances are sufficient for any additional dietary burden arising from the proposed feed tolerances.

Comment: It is not clear what analysis this statement is referring to. In any case, raising the tolerances in feed should result in new meat tolerance studies being done.

Agency response. EPA has conducted an analysis of the reasonable worst-case livestock diets, which include the additional dietary burden from the glyphosate feed tolerances proposed in the FR Notice. Adequate animal feeding studies are available for glyphosate in cattle, swine, and poultry. Based on the existing and proposed tolerances, the total estimated dietary burden derived from treated feed commodities (including those genetically altered to be tolerant to glyphosate) would not result in meat, milk, or egg residues that exceed currently established food tolerances on these commodities.

2. *Drinking water—Persistence in soil—Comment:* Glyphosate is acknowledged to be extremely persistent in the soil under typical application conditions. AMPA (the primary metabolite) is even more persistent than glyphosate. Studies in eight states found that the half-life in soil (the time required for half of the original concentration of a compound to break down or dissipate) was between 119 and 958 days. AMPA has been found in lettuce and barley planted a year after glyphosate treatment.

Agency response. Based on studies conducted both in the laboratory and the field, the Agency has determined that glyphosate is readily degraded by soil microbes to AMPA which is subsequently degraded to CO2. Data from field dissipation trials from eight sites show that the median half-life (DT50) for glyphosate applied at maximum use rates was 13.9 days with a range of 2.6 (Texas) to 140.6 (Iowa). The reported half-lives from the field studies conducted in the coldest climates, i.e., Minnesota, New York, and Iowa were longest at 28.7, 127.8, and 140.6 days, respectively, indicating that the rate of glyphosate degradation is somewhat slower in cooler climates compared to milder ones. Further degradation of AMPA to CO2 occurs at a slower rate than the initial degradation of glyphosate. Because of the strong binding of both glyphosate and AMPA to soil particles, there is very little uptake into plants of either glyphosate or AMPA from soil, even right after application of glyphosate. AMPA was found in only trace levels in lettuce and barley planted a year after application of glyphosate to soil. AMPA has been determined to not be of toxicological concern.

3. *Found in water*. The Notice states:

Glyphosate adsorbs strongly to soil and would not be expected to move vertically below the 6 inch soil layer.

Comment: This is a false assumption. Glyphosate can move into surface water when the soil particles to which it tends to bind are washed into streams or rivers. Glyphosate has been found in both ground and surface water, where it can be toxic to aquatic life for a time.

Agency response. The FR notice statement refers to behavior of glyphosate in soil and its potential for movement to ground water, not its movement into surface water. Glyphosate adsorbs strongly to soil particles, which limits its vertical movement in soil and makes contamination of ground water unlikely to occur.

Glyphosate can potentially occur in surface water from spray drift, runoff, soil particle movement, or by direct application, but at concentrations that are much lower than levels at which toxic effects to aquatic organisms may occur. The Agency has estimated glyphosate levels that could occur in surface water based on presently approved use patterns using computer-modeling methods. Based on toxicological data from acute and chronic tests on fish and other aquatic species, EPA has determined that the potential for environmental effects of glyphosate in surface water is minimal.

The Notice states:

The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for glyphosate in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of glyphosate.

Comment: The Agency had better get monitoring exposure data for drinking water, for both glyphosate and for AMPA.

Agency response. In November 1999, the EPA Office of Water issued a report titled ''A Review of Contaminant Occurrence in Public Drinking Water Systems.'' The data in the report is further discussed in the report ''Occurrence Summary and Use Support Document for the Six-Year Review of National Primary Drinking Water Regulations'' (draft report issued in March 2002). The study is an analysis to date of the occurrence of contaminants in public water systems (PWSs). State data bases of compliance-monitoring data from PWSs were the primary data sources for the analysis. Glyphosate monitoring data of both surface water and ground water sources for 7,800 PWSs were included in the analysis. Occurrences of detectable levels of glyphosate in ground water or surface water were very infrequent. All detections of glyphosate were below 10% of the Maximum Contaminant Level (MCL), which is the health-based maximum permissible level of a contaminant in water that is delivered to any user of a PWS. Only 0.1% of the PWSs reported any detection of glyphosate at a level above 1% of the MCL. These monitoring results are consistent with the modeling predictions discussed above, and reinforce the Agency's conclusion that aggregate exposure to glyphosate via all exposure routes, including drinking water, will not exceed the Agency's level of concern (100% of the cPAD).

4. *Non-dietary exposure*. The Notice states:

iii. Based on the low acute toxicity and the lack of other toxicological concerns, exposures from residential uses (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets) of glyphosate are not expected to pose undue risks.

Comment: There are many toxicological concerns and in California, glyphosate exposure illness among agricultural and landscape workers is common with serious effects reported including blurred vision, peeling of skin, nausea, headache, vomiting, diarrhea, chest pain, dizziness, numbness. How does EPA define undue risks?

Agency response. Some glyphosate end-use products are assigned Toxicity Categories I and II for eye and dermal irritation because they contain POEA surfactants, which have been identified as eye and dermal irritants. For all such formulations, the Agency continues to recommend the addition of personal protective equipment (PPE) and precautionary statements appropriate for labeling of end-use products in Toxicity Categories I and II.

D. Cumulative Effects

The Notice states:

EPA does not have, at this time, available data to determine whether glyphosate has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerances action, therefore, EPA has not assumed that glyphosate has a common mechanism of toxicity with other substances.

Comment: When the mode of action is not clearly understood, even more uncertainty exists regarding synergistic effects with other substances. Rather

than raising tolerances, EPA should be exercising the Precautionary Principle and lowering them.

Agency response. The herbicidal mode-of-action of glyphosate in plants is well-understood (see Unit A. Residue Chemistry, Agency response of this document) but is not relevant to the determination of whether it shares a common mechanism of toxicity with other substances. Glyphosate does not appear to produce a toxic metabolite that is also produced by other substances that could be grouped together for a cumulative risk assessment, thus at this time, EPA will not include glyphosate in such an assessment.

E. Safety Determination

U.S. population and infants and children—Comment: The mode of action of glyphosate is not understood, synergistic effects are not understood, and a multitude of studies indicate that glyphosate is toxic in all standard categories of toxicological testing. Again, rather than raising tolerances, EPA should be exercising the Precautionary Principle and lowering them.

Agency response: The herbicidal mode-of-action of glyphosate in plants is well-understood (see the previous discussion above) but is not relevant to the determination of whether it shares a common mechanism of toxicity with other substances. Glyphosate does not appear to produce a toxic metabolite that is also produced by other substances that could be grouped together for a cumulative risk assessment, thus at this time, EPA will not include glyphosate in such an assessment. In evaluating these tolerance petitions, EPA has concluded that the proposed tolerances meet the FFDCA standard of reasonable certainty of no harm. This standard requires consideration of aggregate exposure to glyphosate from existing uses as well as exposure from the new uses proposed in the petitions before EPA. EPA requires that toxicological tests conducted with individual active ingredients using validated testing methods be submitted and reviewed in support of its registration decisions. Results from a complete data base of acceptable studies conducted with glyphosate have demonstrated that adverse effects will not occur at expected exposure levels. The Agency is not aware of scientific evidence that demonstrates enhanced potency of glyphosate's toxicological effects that arise through synergistic mechanisms.

F. International Tolerances

Several maximum residue limits (MRLs) for glyphosate have been established by Codex in or on various commodities. The Codex MRL for rice grain is 0.1 ppm. The proposed rice grain tolerance of 15.0 ppm, is based on crop field trial data obtained using glyphosate-tolerant rice and therefore cannot be lowered to maintain harmonization with the Codex MRL of 0.1 ppm. (Unit F of the Notice). Also, the Codex MRL for grass hay is 50 ppm, and that proposed here is 300 ppm; the Codex MRL for field corn is 1 ppm, and that proposed here is 6 ppm and the same statement, that the tolerance cannot be lowered, applies.

Comment: Here is a great example of one of the many detrimental ramifications from the widespread use of GMO's. They drive up the levels of pesticide residues in crops for food and feed, while the majority of society is trying to avoid consumption of pesticides. It is unclear here, who has written this part of the FR Notice, EPA or Monsanto. The phrase, cannot be lowered is an ominous statement. If followed, it means that if a corporation benefits from commercializing a product, all other values and considerations must be cast aside.

Agency response. The rice grain tolerance of 15.0 ppm initially requested by Monsanto Company and cited in the notice of filing pesticide petition to establish a tolerance for glyphosate in or on food (April 17, 2002, 67 FR 18894) is not included in this tolerance petition. In addition, Monsanto Company has amended the tolerance petition by deleting the proposed tolerance increase to 6 ppm for wheat, grain and revising its Roundup UltraMax Herbicide label by removing all instructions related to a preharvest application of this product to Roundup Ready wheat. EPA has determined that the amended use instructions support the existing 5 ppm tolerance level for wheat, grain (40 CFR 180.364).

The pesticide petition process exists so that petitioners can request that EPA establish new food or feed tolerances, or increase existing tolerances, to accommodate new pesticide uses. Petitions are only filed when residue studies have demonstrated that food residues requiring tolerances may occur. Although EPA's approval of such petitions does authorize the potential for increased exposure levels, the existence of food tolerances is not indicative of significant consumer risk. Using worst-case assumptions that: (1) 100% of crops will be treated and (2) that residues will occur at tolerance levels in all cases, EPA has concluded that exposure to glyphosate from food, including all present and proposed tolerances, will utilize only 1.8% of the cPAD for the U.S. population, 3.8% of the cPAD for all infants less than 1 year old, and 3.6% of the cPAD for children (1 to 6 years old). Thus, the risk to human health does not exceed the Agency's level of concern (100% of the cPAD).

The phrase cannot be lowered indicates that glyphosate use patterns in the U.S. differ from those that have been considered by Codex, and therefore the new U.S. food and/or feed tolerances are not harmonized with established Codex MRLs. Codex procedures require that new pesticide uses and tolerances must first be approved by national governments before they can be considered by the Codex Committee on Pesticide Residues. As a result, differences between Codex MRLs and U.S. tolerances are anticipated as use patterns evolve. Codex uses the Periodic Review process to periodically update MRLs to reflect the modified use patterns.

G. Conclusions

Comment: In many parts of this FR Notice, it is not possible to tell who has written it, EPA or Monsanto. As a member of an organization working hard to promote an environmentally sound, economically viable, socially just and humane agriculture and food system in this country, I was expecting to see evidence of an agency working to protect human health and our environment, this is very disappointing. Furthermore, there is no consideration given here to the effects the increased use of this pesticide may have on the soil. Lab studies have demonstrated that glyphosate reduces nitrogen fixation associated with legumes and increases the susceptibility of crop plants to a number of diseases. Roundup is toxic to *mycorrhizal* fungi, with effects on some species observed at concentrations of 1 ppm, lower than those found in soil following typical applications.

Agency response. Publication of petitioner-generated summaries is dictated by the FFDCA, 21 U.S.C. 346a(d)(3). The Notice clearly indicates that the petitioner, Monsanto, has written the summary. However, much of this information can be found in the Agency's risk assessment document/ supporting documentation for glyphosate. EPA has conducted a complete and thorough review of the available data for glyphosate. Based on the risk assessments conducted for glyphosate, the Agency determined that there is reasonable certainty that

exposure to glyphosate will not pose unreasonable risks or adverse effects to humans or the environment.

The Agency has received no reports indicating that the use of glyphosate adversely effects nitrogen fixation in legumes or that it increases the disease susceptibility of crops. These type of environmental considerations are more appropriately raised in connection with the FIFRA registration process.

H. Biotechnology Related Issues

Comment: Several comments were received in the public docket that expressed concern over the tolerance approvals for glyphosate that will directly support new uses in glyphosate-tolerant crops, namely wheat, rice and bentgrass. The list of commenters are as follows: Mark Trechock/Staff Director/ Dakota Resource Council, Annie Ray/ Oregon Rural Action, Helge Hellberg/ Marketing Director/California Certified Organic Farmers, Lauran Dundee/ Regional Outreach Coordinator/Partners for Global Justice and Sustainable Communities, Kevin L. Williams/Field Coordinator/Western Organization of Resource Councils, Suzin Kratina/Chair of the Food Safety Task Force/Northern Plains Resource Council, Harriet Ritter and Renata Brillinger.

Agency response. The rice grain tolerance of 15.0 ppm initially requested by Monsanto Company and cited in the Notice of Filing Pesticide Petition to establish a Tolerance for Glyphosate in or on Food (April 17, 2002, 67 FR 18894), is not included in this final rule.

Tolerance actions for glyphosate are considered independently of the other regulatory assessments that a new crop trait must pass before it can be commercialized. Three U.S. Federal agencies regulate crops incorporating traits derived from biotechnology. The Food and Drug Administration (FDA) has responsibility for evaluating the safety of crops derived through biotechnology for use as food and feed. The U.S. Department of Agriculture, Animal Plant Health Inspection Service (USDA APHIS) is responsible for agronomic characteristics and environmental impact. EPA is responsible for the assessment of the human health and environmental risk of pesticide products, including plant-incorporated pesticides, and their registration under FIFRA, as amended. Commercialization by Monsanto of additional glyphosate-tolerant crops, i.e., wheat, rice and bentgrass, cannot occur until such time as the USDA APHIS and the FDA have received and evaluated necessary data from the registrant and granted necessary approvals. As of 2002, Monsanto has submitted a petition to USDA APHIS for GM bentgrass.

Despite the separate nature of the evaluations and approvals, much closer communication has developed between the three agencies in recent years. In early 2001, EPA and USDA APHIS established an interagency work group for products derived from biotechnology. Through this joint working group, EPA consults on a stewardship plan for each new herbicide-tolerant crop that addresses the management of pest resistance and the potential for weedy volunteer crops in their herbicide-tolerant crops and in crop rotations. This stewardship plan is then incorporated into a full environmental impact assessment by USDA APHIS that addresses the potential for development of resistant weed populations through pollen flow, in addition to effects on non- target organisms and agricultural practices. EPA and USDA APHIS have established a strong working relationship through this joint review process that helps ensure that the concerns of both agencies are adequately addressed prior to final approval by either.

Based on the incomplete status of the interagency approval process discussed above, EPA has decided not to register the use of glyphosate in or on herbicide-tolerant wheat or herbicide-tolerant bentgrass at this time.

Some commenters express concern over the potential contamination of organic crops through pollen drift from herbicide-tolerance crop varieties that may be grown on near-by farms. The issue of organic operations in proximity to operations that employ methods that are prohibited under organic rules is discussed in the National Organic Program, Final Rule, available on the USDA Web site at: *http://www.ams.usda.gov/nop/nop2000/Final%20Rule/nopfinal.pdf*.

IV. Statutory Findings

The petition requested that 40 CFR 180.364 be amended by establishing a tolerance for residues of the herbicide glyphosate, in or on animal feed, nongrass, group at 400 part per million (ppm), grass, forage, fodder and hay, group at 300 ppm, wheat, forage at 10 ppm, wheat, hay at 10 ppm, and adding the potassium salt of glyphosate to the tolerance expression.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

V. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of glyphosate on animal feed, nongrass, group at 400 ppm, grass, forage, fodder and hay, group at 300 ppm, wheat, forage at 10 ppm, and wheat, hay at 10 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the acute toxic effects caused by glyphosate are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed in the following Table 2.

TABLE 1.—ACUTE TOXICITY OF GLYPHOSATE TECHNICAL

Guideline No.	Study Type	Results
870.1100	Acute oral	LD_{50} > 5,000 mg/kg Toxicity Category IV
870.1200	Acute dermal	LD_{50} > 5,000 mg/kg Toxicity Category IV
870.1300	Acute inhalation	The requirement for an acute inhalation LC_{50} study was waived
870.2400	Primary eye irritation	Corneal opacity or irritation clearing in 7 days or less Toxicity Category III
870.2500	Primary skin irritation	Mild or slight irritant Toxicity Category IV
870.2600	Dermal sensitization	Not a dermal sensitizer

TABLE 2.—TOXICITY PROFILE OF GLYPHOSATE TECHNICAL

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents - mouse	NOAEL = 1,500 mg/kg/day in males and females LOAEL = 4,500 mg/kg/day in males and females based on decreased body weight gain
870.3100	90–Day oral toxicity rodents - rat (range-finding)	NOAEL = < 50 mg/kg/day in males and females LOAEL = 50 mg/kg/day in males and females based on increased phosphorus and potassium values
870.3150	90–Day oral toxicity in rodents - rat (aminomethyl phosphoric acid - plant metabolite of glyphosate)	NOAEL = 400 mg/kg/day in males and females LOAEL = 1,200 mg/kg/day in males and females based on body weight loss and histopathological lesions of the urinary bladder.
870.3485	28–Day inhalation toxicity - rat (exposure; 6 hours/day, 5 days/week for 4 weeks)	NOAEL = 0.36 mg/L LOAEL = > 0.36 (HDT) mg/L, not established
870.3200	21-Day dermal toxicity - rabbit	NOAEL = 1,000 mg/kg/day in males and females LOAEL = 5,000 mg/kg/day based on slight erythema and edema on intact and abraded skin of both sexes, and decreased food consumption in females
870.3700	Prenatal developmental in rodents - rat	*Maternal* NOAEL = 1,000 mg/kg/day LOAEL = 3,500 mg/kg/day based on inactivity, mortality, stomach hemorrhages and reduced body weight gain *Developmental* NOAEL = 1,000 mg/kg/day LOAEL = 3,500 mg/kg/day based on increased incidence in the number of fetuses and litters with unossified sternebrae and decreased fetal body weight.

TABLE 2.—TOXICITY PROFILE OF GLYPHOSATE TECHNICAL—Continued

Guideline No.	Study Type	Results
870.3700	Prenatal developmental in nonrodents - rabbit	*Maternal* NOAEL = 175 mg/kg/day LOAEL = 350 mg/kg/day based on mortality, diarrhea, soft stools, and nasal discharge. *Developmental* NOAEL = 350 mg/kg/day LOAEL = > 350 (HDT) mg/kg/day, not established
870.3800	Reproduction and fertility effects - rat (3-generation)	*Parental/Systemic* NOAEL = 30 mg/kg/day LOAEL = > 30 (HDT) mg/kg/day, not established *Reproductive* NOAEL = 30 mg/kg/day LOAEL = > 30 (HDT) mg/kg/day, not established *Offspring* NOAEL = 10 mg/kg/day LOAEL = 30 mg/kg/day based on focal dilation of the kidney in male F3b pups
870.3800	Reproduction and fertility effects - rat (2-generation)	*Parental/Systemic* NOAEL = 500 mg/kg/day in males and females LOAEL = 1,500 mg/kg/day in males and females based on soft stools, decreased body weight gain and food consumption. Focal dilation of the kidney observed at 30 mg/kg/day in the 3-generation study was not observed at any dose level in this study. *Reproductive* NOAEL = > 1,500 (HDT) mg/kg/day in males and females LOAEL = > 1,500 (HDT) mg/kg/day in males and females, not established *Offspring* NOAEL = 500 mg/kg/day in males and females LOAEL = 1,500 mg/kg/day in males and females based on reduced pup weights during the second and third weeks of lactation
870.4100	Chronic toxicity dogs	NOAEL = 500 (HDT) mg/kg/day in males and females LOAEL = > 500 mg/kg/day in males and females, not established
870.4300	Chronic/carcinogenicity rats	NOAEL = 362 mg/kg/day in males LOAEL = 940 mg/kg/day in males based on decreased urinary pH, increased incidence of cataracts and lens abnormalities, and increased absolute and relative (to brain) liver weights NOAEL = 457 mg/kg/day in females LOAEL = 1,183 mg/kg/day in females based on decreased body weight gain No evidence of carcinogenicity

TABLE 2.—TOXICITY PROFILE OF GLYPHOSATE TECHNICAL—Continued

Guideline No.	Study Type	Results
870.4300	Carcinogenicity mice	NOAEL = 750 mg/kg/day in males LOAEL = 4,500 mg/kg/day in males based on significant decreased body weight gain, hepatocyte necrosis, and interstitial nephritis NOAEL = 750 mg/kg/day in females LOAEL = 4,500 mg/kg/day in females based on significant decreased body weight gain, increased incidence of proximal tubule epithelial basophilia, and hypertrophy in the kidney of females No evidence of carcinogenicity
870.5100	Gene mutation assay in *S. typhimurium strains*	Negative. Non-mutagenic when tested up to 1,000 µg/plate, in presence and absence of activation, in *S. typhimurium* strains TA98, TA100, TA1535 and TA1537.
870.5100	Gene mutation assay in *E. coli* WP2hcrA and *S. typhimurium* strains	Negative for reverse gene mutation, both with and without S-9, up to 5,000 µg/plate (or cytotoxicity) with *E. coli* WP2hcrA and *S. typhimurium* TA98, TA100, TA1535, TA1537, and TA1538
870.5300	Gene mutation assay in Chinese hamster ovary (CHO) cells/HGPRT	Negative. Non-mutagenic at the HGPRT locus in Chinese hamster ovary cells tested up to cytotoxic concentrations or limit of solubility, in presence and absence of activation.
870.5385	Cytogenetics - *In vivo* bone marrow chromosomal aberration assay	Negative. Non-mutagenic in rat bone marrow chromosome assay up to 1,000 mg/kg in both sexes of Sprague Dawley rats
870.5550	Other mechanisms - *In vitro* Rec-Assay with *B. subtilis* H17 (rec+) and M45 (rec-)	There was no evidence of recombination in the rec-assay up to 2,000 µg/disk with *B. subtilis* H17 (rec+) and M45 (rec-)
870.6200	Acute neurotoxicity screening battery in rats	N/A
870.6200	Subchronic neurotoxicity screening battery in rats	N/A
870.6300	Developmental neurotoxicity in rats	N/A
870.7485	Metabolism and pharmacokinetics - rat	Absorption was 30-36% in males and females. Glyphosate was excreted unchanged in the feces and urine (97.5% minimum). The only metabolite present in the excreta was AMPA. Less than 1% of the absorbed dose remained in the carcass, primarily bone. Repeat dosing did not alter metabolism, distribution, and excretion.
870.7600	Dermal penetration	N/A

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is

routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for glyphosate used for human risk assessment is shown in the following Table 3.

TABLE 3.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR GLYPHOSATE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk	Assessment Study and Toxicological Effects
Acute dietary (females 13-50 years old and general population)	None	None	An acute dietary endpoint was not selected for the general population or females 13-50, since an appropriate endpoint attributable to a single exposure was not identified in the toxicology data base
Chronic dietary (all populations)	NOAEL = 175 mg/kg/day UF = 100 Chronic RfD = 1.75 mg/kg/day	FQPA SF = 1 cPAD = cRfD ÷ FQPA SF = 1.75 mg/kg/day	Developmental toxicity study - rabbit LOAEL = 350 mg/kg/day based on diarrhea, nasal discharge and death in maternal animals
Short-, and intermediate-term incidental, oral (Residential)	NOAEL = 175 mg/kg/day	LOC for MOE = 100	Developmental toxicity study - rabbit LOAEL = 350 mg/kg/day based on diarrhea, nasal discharge and death in maternal animals
Short-, intermediate- and long-term dermal (1–30 days, 1–6 months, 6 months–lifetime) (Occupational/Residential)	None	None	Based on the systemic NOAEL of 1,000 mg/kg/day in the 21–day dermal toxicity study in rabbits, and the lack of concern for developmental and reproductive effects, the quantification of dermal risks is not required
Short-, intermediate- and long-term inhalation (1–30 days, 1–6 months, 6 months-lifetime) (Occupational/Residential)	None	None	Based on the systemic toxicity NOAEL of 0.36 mg/L (HDT) in the 28–day inhalation toxicity study in rats, and the physical characteristics of the technical (wetcake), the quantification of inhalation risks is not required
Cancer (oral, dermal, inhalation)	Cancer classification (Group E)	Risk Assessment not required	No evidence of carcinogenicity

*The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.364) for the residues of glyphosate, in or on a variety of raw agricultural commodities. The current proposal to establish glyphosate tolerances at 300 and 400 ppm for animal feed, nongrass, group (Crop Group 18) and grass, forage, fodder and hay, group (Crop Group 17), respectively, is not expected to result in an increase in the dietary burden for cattle, poultry, and hogs. Respective dietary burdens of 210 ppm and 220 ppm were recently estimated by the Agency for dairy and beef cattle, including a contribution from alfalfa hay as the roughage component of the diet with a tolerance of 400 ppm. Furthermore, no impact is expected on the dietary burden to poultry or hogs since grass forage and hay are not feed items for these livestock, and the contribution from alfalfa was already considered. Risk assessments were conducted by EPA to assess dietary exposures from glyphosate in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. A review of the toxicity data base, including the developmental toxicity studies in rats and rabbits, did not provide an endpoint that could be used to quantitate risk to the general population and to females 13–50 years old from a single-dose administration of glyphosate. Therefore, no acute dietary analysis was conducted for glyphosate.

ii. *Chronic exposure*. The glyphosate chronic dietary exposure analysis was conducted using the DEEM™ software Version 7.73, which incorporates consumption data from USDA's CSFII, 1989-1992. The 1989–92 data are based on the reported consumption of more than 10,000 individuals over 3 consecutive days, and therefore represent more than 30,000 unique person days of data. Foods as consumed (i.e., apple pie) are linked to raw agricultural commodities and their food forms (i.e., apples-cooked/canned or wheat-flour) by recipe translation files internal to the DEEM™ software. Consumption data are averaged for the entire U.S. population and within population subgroups for chronic exposure assessment, but are retained as individual consumption events for acute exposure assessment.

For chronic dietary exposure and risk assessments, an estimate of the residue level in each food or food-form (i.e., orange or orange-juice) on the commodity residue list is multiplied by the average daily consumption estimate for that food/food form. The resulting residue consumption estimate for each food/food form is summed with the residue consumption estimates for all other food/food forms on the commodity residue list to arrive at the total estimated exposure. Exposure estimates are expressed in mg/kg body weight/day and as a percent of the cPAD for chronic exposure. This procedure is performed for each population subgroup.

The Tier 1 chronic dietary exposure analysis for glyphosate is an upper bound estimate of chronic dietary exposure. The chronic dietary exposure analysis was performed for the general U.S. population and all population subgroups using DEEM™ default processing factors for rice and corn commodities, tolerance levels, and 100% crop treated data for the proposed commodities and all registered uses. For chronic dietary risk, the Agency's LOC is less than 100% cPAD. Dietary exposure estimates for representative population subgroups are presented in Table 4. The results of the chronic analysis indicate that the estimated chronic dietary risk as represented by the percent cPAD is below the Agency's LOC (100% cPAD) for the U.S. population and all population subgroups.

TABLE 4.—SUMMARY OF RESULTS FROM CHRONIC DEEM™ ANALYSIS OF GLYPHOSATE

Subgroup	Exposure (mg/kg/day)	% cPAD
U.S. population (total)	0.031527	1.8
All Infants (< 1 year old)	0.062218	3.6
Children (1–6 years old)	0.068016	3.9
Children (7–12 years old)	0.045529	2.6
Females (13–50 years old)	0.023477	1.3
Males (13–19 years old)	0.031938	1.8
Males (20+ years old)	0.026745	1.5
Seniors (55+ years old)	0.022733	1.3

iii. *Cancer*. The HED Cancer Peer Review Committee classified glyphosate as a Group E chemical, negative for carcinogenicity in humans, based on the absence of evidence of carcinogenicity in male and female rats as well as in male and female mice.

iv. *Anticipated residue and percent crop treated information*. The Agency used tolerance levels and 100% percent crop treated (PCT) data for the proposed commodities and all registered uses.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for glyphosate in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of glyphosate.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a Tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental

concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and from residential uses. Since DWLOCs address total aggregate exposure to glyphosate, they are further discussed in the aggregate risk section E. (Aggregate Risks and Determination of Safety) of this Unit.

Based on the GENEEC and SCI-GROW models, the EECs of glyphosate for acute exposures are estimated to be 21 parts per billion (ppb) for surface water and 0.0038 ppb for ground water. The EECs for chronic exposures are estimated to be 0.83 ppb for surface water and 0.0038 ppb for ground water, based on glyphosate treatment crops. To estimate the possible concentration of glyphosate in surface water resulting from direct application to water, the Agency assumed application to a water body 6 feet deep. At an application rate of 3.75 lb acid equivalent (ae)/A, the estimated concentration is 230 ppb. Because the glyphosate water-application estimate is greater than the crop application estimate, 230 ppb is the appropriate value to use in the chronic risk estimate.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

i. *Non-occupational (recreational) exposures*. Glyphosate is currently registered for use on the following residential non-dietary sites: Recreational areas, including parks and golf courses for control of broadleaf weeds and grasses, and lakes and ponds, including reservoirs for control of nuisance aquatic weeds. Based on the registered uses, adult and child golfers are anticipated to have short-term post-application dermal exposure at golf courses. Swimmers (adults, children and toddlers) are anticipated to have short-term post-application dermal and incidental ingestion exposures. However, since the Agency did not select dermal endpoints, no post-application dermal assessment is included; only a post-application incidental ingestion exposure assessment (swimmers) is included. Risk estimates for incidental ingestion by swimmers (adults, children, and toddlers) ranged from 7,600 to 36,000. It should be noted however, that glyphosate is used for non-selective weed control on emerged aquatic weeds. In this use pattern, it is unlikely that swimmers would be present in waterbodies with floating weeds present. Thus, the inclusion of the swimmer incidental ingestion exposure assessment is considered by the Agency to be conservative. Table 5 presents a summary of assumptions used to estimate the exposure to adult and toddler child swimmers and the corresponding risk estimates.

TABLE 5.—ASSUMPTIONS AND RISK ESTIMATES FOR POST-APPLICATION SWIMMER EXPOSURE ASSESSMENTS FOR GLYPHOSATE, ISOPROPYLAMINE SALT

Exposure Scenario	AR1 (lb a.e./A)	Maximum Concentration in water (mg/L) [2]	Potential Dose Rate (PDR; oral mg/kg bw/day) [3]	Short-term MOE [4]
Incidental oral ingestion, adult-female	3.75	1.38	0.00493	36,000
Incidental oral, toddler			0.023	7,600

[1] Application rate from registered labels for aquatic weed control using glyphosate IPA salt (ex. label = EPA Reg. No. 524–343; max rate = 7.5 pints/A containing 4 lb ae glyphosate/gal. x 1 gal./4 pints = 3.75 lb ae/A.

[2] Maximum concentration in water (top 1 ft.) = 3.75 lb ae/A x 1A/43,560 ft^2 x 454,000 mg/lb x 1/ft x ft^3/28.32 L = 1.38 mg/L.

[3] PDR, incidental oral exposure = concentration, Cw (mg/L) x ingestion rate, IgR (L/hr) x exposure time, ET (hrs/d) x 1/BW (adult-female = 60 kg; toddler = 15 kg).

[4] MOE = NOAEL/PDR; short-term incidental oral NOAEL = 175 mg/kg bw/d; The LOC for adult females and toddlers for short-term, incidental oral exposures is MOEs < 100.

The MOEs presented in Table 5 for post-application exposure by swimmers to glyphosate in aquatic weed control applications are greater than 100 and do not exceed the Agency's LOC for short-term non-occupational (recreational) exposures (MOEs less than 100).

ii. *Residential exposures*. Glyphosate, isopropylamine salt is also registered for broadcast and spot treatments on home lawns and gardens by homeowners and by lawn care operators (LCOs). Based on the registered residential use patterns, there is a potential for short-term dermal and inhalation exposures to homeowners who apply products containing glyphosate (residential handlers). Additionally, based on the results of environmental fate studies, there is also a potential for short- and intermediate-term post-application dermal exposures by adults and toddlers and incidental ingestion exposures by toddlers. However, since the Agency did not select short- or intermediate-term dermal or inhalation endpoints, no residential handler or post-application dermal assessment is included; only a post-application toddler assessment for incidental ingestion exposures is included. Risk estimates for toddler post-application incidental ingestion exposures ranged from 7,200 to greater than 10^6. All recreational and residential exposures assessed do not exceed the Agency's level of concern (MOEs less than 100). Table 6 provides a summary of the short- and intermediate-term risk estimates for post-application incidental ingestion exposures to toddlers.

TABLE 6.—SUMMARY OF TODDLER INCIDENTAL INGESTION EXPOSURES AND RISK ESTIMATES FOR RESIDENTIAL USE OF GLYPHOSATE, ISOPROPYLAMINE SALT [1]

Activity	AR (lbs a.e./A) [2]	Residue Estimate [3]	PDR (mg/kg bw/d) [4]	Short-/Intermediate-term MOE [5]
Hand-to-mouth	1.62	DFR: 0.908 µg/cm^2	0.0242	7,200
Object-to-mouth		DFR: 3.63 µg/cm^2	0.00605	29,000
Soil ingestion		Soil residue: 12.2 µg/g soil	8.13 x 10^{-5}	> 10^6

[1] Sources: Standard Operating Procedures for Residential Exposure Assessments, Draft, December 17, 1997 and Exposure SAC Policy No. 11, February 22, 2001: Recommended Revisions to the SOPs for Residential Exposure.
[2] AR = maximum application rate on Roundup ProDry label (EPA Reg. No. 524–505) for residential lawn treatment.
[3] Residue estimates based on the following protocol from the Residential SOPs:
a. Hand-to-mouth DFR = 1.62 lb ae/A x 0.05 x (4.54 x 10^{-8} µg/lb ae) x (2.47 x 10^{-8} A/cm^2) = 0.908 g/cm^2.
b. Object-to-mouth DFR = 1.62 lb ae/A x 0.20 x (4.54 x 108 µg/lb ae) x (2.47 x 10^{-8} A/cm^2) = 3.63 µg/cm^2.
Soil Residue = 1.62 lb ae/A x fraction of residue in soil (100%)/cm x (4.54 x 10^8 µg/lb ae) x (2.47 x 10^{-8}A/cm2) x 0.67 cm^3/g= 12.2 µg/g soil.
[4] Potential Dose Rate (PDR; already normalized to body weight of toddler).
a. Hand-to-mouth PDR = (0.908 g/cm^2 x 0.50 x 20 cm^2/event x 20 events/hr x 10^{-3} mg/µg x 2 hrs/d)/15 kg = 0.0242 mg/kg bw/d.
Object-to-mouth PDR = (3.63 g/cm^2 x 25 cm^2/d x 10^{-3} mg/µg)/15 kg = 0.00605 mg/kg bw/d.
Soil Ingestion PDR = (12.2 µg/g soil x 100 mg soil/d x 10^{-6} g/µg)/15 kg = 8.13 x 10^{-5} mg/kg bw/d.
[5] MOE = NOAEL/PDR, where the short-term incidental oral NOAEL = 175 mg/kg/d the Agency's LOC is for MOEs < 100 (short-term residential).

All MOEs calculated for post-application toddler exposures do not exceed the Agency's level of concern for residential exposures (MOEs less than 100).

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether glyphosate has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, glyphosate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that glyphosate has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1.*In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* The toxicology data base for glyphosate is adequate according to the Subdivision F Guideline requirements for a food-use chemical. Acceptable developmental toxicity studies in the rat and rabbit are available, as is an acceptable 2-generation reproduction study in the rat. Based on the available data, the Agency determined that there is no evidence of either a quantitative or qualitative increased susceptibility following in utero glyphosate exposure to rats and rabbits, or following prenatal/postnatal exposure in the 2-generation reproduction study in rats.

3. *Conclusion.* There is a complete toxicity data base for glyphosate and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency determined that the FQPA Safety Factor to protect infants and children can be removed (reduced from 10X to 1X) for all population subgroups and exposure scenarios because:

1. The toxicology data base is complete.

2. A developmental neurotoxicity study is not required.

3. The dietary (food and drinking water) exposure assessments will not underestimate the potential exposures for infants and children.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative

drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute aggregate risk (food + drinking water).* The Agency did not identify an appropriate acute dietary endpoint that is the result of a single-dose administration of glyphosate. Accordingly, glyphosate is not expected to pose an acute risk.

2. *Chronic aggregate risk (food + drinking water).* Using the exposure assumptions described in this unit for chronic exposure (tolerance level residues, DEEM™ default processing factors for rice and corn commodities, and 100% crop treated data for all proposed commodities and registered uses), EPA has concluded that exposure to glyphosate from food will utilize 1.8% of the cPAD for the U.S. population, 3.6% of the cPAD for [All Infants (less than 1 year old) and 3.9% of the cPAD for children 1–6 years old. The results of the chronic analysis (Table 4 in this unit) indicate that the chronic dietary risk estimates for the general U.S. population and all population subgroups associated with the existing and proposed uses of glyphosate do not exceed the Agency's LOC (less than 100% of the cPAD). Based on the use pattern, chronic residential exposure to residues of glyphosate is not expected. In addition, there is potential for chronic dietary exposure to glyphosate in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 7 below:

TABLE 7.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO GLYPHOSATE

Scenario/Population Subgroup	cPAD, mg/kg/day	Chronic Food Exposure, mg/kg/day	Maximum Chronic Water Exposure [1], mg/kg/day	Ground Water EEC, ppb	Surface Water EEC, ppb	Chronic DWLOC [2], ppb
U.S. population	1.75	0.031527	1.718473	0.0038	230	60,000
All infants (< 1 year old)	1.75	0.062218	1.687782	0.0038	230	17,000
Children (1–6 years old)	1.75	0.068016	1.681984	0.0038	230	17,000
Children (7-12 years old)	1.75	0.045529	1.704471	0.0038	230	17,000
Females (13-50 years old)	1.75	0.023473	1.726527	0.0038	230	52,000
Males (13-19 years old)	1.75	0.031938	1.718062	0.0038	230	60,000
Males (20+ years old)	1.75	0.026745	1.723255	0.0038	230	60,000
Seniors (55+ years old)	1.75	0.022733	1.727267	0.0038	230	60,000

[1] Maximum chronic water exposure (mg/kg/day) = cPAD (mg/kg/day) - chronic food exposure from DEEM™ (mg/kg/day).
[2] The chronic DWLOCs were calculated as follows: DWLOC (μg/L) = maximum water exposure (mg/kg/day) x body weight (kg) ÷ consumption (L/day) x 0.001 mg/μg.

3. *Short-/intermediate-term aggregate risk (food + residential + water).* In aggregating short-/intermediate-term risk, HED considered background chronic dietary exposure (food + water) and short/intermediate-term incidental oral exposures (see Tables 6 and 7). Because the incidental oral ingestion exposure estimates for toddlers from residential turf exposures (Table 7) exceeded the incidental oral exposure estimates from post-application swimmer exposures (Table 6), the Agency conducted this risk assessment using exposure estimates from just the worst-case situation. No attempt was made to combine exposures from the swimmer and residential turf scenarios due to the low probability of both occurring.

The total short-/intermediate-term food and residential aggregate MOEs are 1,800-2,300. As these MOEs are greater than 100, the short-/intermediate-term aggregate risk does not exceed the Agency's LOC. For surface water and ground water, the EECs of glyphosate are less than the DWLOCs for glyphosate in drinking water as a contribution to short-/intermediate-term aggregate exposure. Therefore, the Agency concludes with reasonable certainty that residues of glyphosate in drinking water do not contribute significantly to the short-/intermediate-term aggregate human health risk at the present time. Table 8 summarizes the short-/intermediate-term aggregate exposure to glyphosate residues.

TABLE 8.—SHORT/INTERMEDIATE-TERM AGGREGATE RISK AND DWLOC CALCULATIONS FOR EXPOSURE TO GLYPHOSATE RESIDUES

Population	Short-/Intermediate-Term Exposure Scenario				
	Aggregate MOE (food + residential) [1]	Aggregate Level of Concern (LOC) or Target MOE [2]	Surface Water EEC [3] (ppb)	Ground Water EEC [3] (ppb)	Short/Intermediate-Term DWLOC [4], (ppb)
All Infants (<1 year old)	1,900	100	230	0.0038	17,000
Children (1–6 years old)	1,800	100	230	0.0038	17,000
Children (7–12 years old)	2,300	100	230	0.0038	17,000

[1] Aggregate MOE = NOAEL ÷ (Average food exposure + Residential exposure).
[2] Basis for the target MOE: interspecies and intraspecies uncertainty factors totaling 100.
[3] The glyphosate use producing the highest level was used.
[4] DWLOC(µg/L or ppb) = maximum water exposure (mg/kg/day) x body weight (kg) ÷ water consumption (L) x 10^{-3} mg/µg (10 kg body weight assumed).

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to glyphosate residues.

VI. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for analysis of residues of glyphosate in or on plant and livestock commodities. These methods include GLC (Method I in Pesticides Analytical Manual (PAM) II; the limit of detection is 0.05 ppm) and HPLC with fluorometric detection. Use of the GLC method is discouraged due to the lengthiness of the experimental procedure. The HPLC procedure has undergone successful Agency validation and was recommended for inclusion in PAM II. A GC/MS method for glyphosate in crops has also been validated by EPA's Analytical Chemistry Laboratory (ACL). Thus, adequate analytical methods are available for residue data collection and enforcement of the proposed tolerances of glyphosate in/on the nongrass animal feed crop group; the grass forage, fodder, and hay crop group; wheat forage and hay; and livestock commodities.

B. International Residue Limits

Codex and Mexican maximum residue limits (MRLs) are established for residues of glyphosate (glifosato) *per se* and Canadian MRLs are established for combined residues of glyphosate and AMPA in a variety of raw agricultural, processed, and animal commodities. Currently a relevant Codex MRL for hay or fodder (dry) of grasses is established at 50 ppm. No Canadian MRLs are established for any grass commodity. A Mexican MRL is established for pasture at 0.2 ppm. Because of the higher residue levels resulting from the proposed use pattern, harmonization of U.S. grass tolerances with existing Codex or Mexican MRLs is not possible.

For wheat-related commodities, relevant Codex MRLs exist for: wheat grain at 5 ppm; unprocessed wheat bran at 20 ppm; wheat flour at 0.5 ppm; wheat wholemeal at 5 ppm; and straw and fodder (dry) of cereal grains at 100 ppm. Canadian MRLs are established for: wheat at 5 ppm and wheat milling fractions (excluding flour) at 15 ppm. A Mexican MRL is established for wheat at 5 ppm. By maintaining the wheat, milling fractions (excluding flour) tolerance at 20 ppm, harmony with international tolerances for wheat processed fractions can be maintained.

There are currently no Codex or Canadian MRLs established for glyphosate for any nongrass animal feed items. A Mexican MRL is established for alfalfa at 200 ppm. Harmonization with this level is not possible due to the higher residue levels found in the submitted field trial studies.

C. Conditions

None.

VII. Conclusion

Therefore, the tolerance is established for residues of glyphosate, in or on animal feed, nongrass, group at 400 ppm and grass forage, fodder and hay, group at 300 ppm and the potassium salt of glyphosate is added to the tolerance expression. Based on the Agency's decision not to register tolerances for glyphosate use in or on herbicide-tolerant wheat, the current tolerances on wheat are not modified.

VIII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0232 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 26, 2002.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing

is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0232, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IX. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal

officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq*., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 18, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.364 is amended by revising the introductory text of paragraph (a) and alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) *General*. Tolerances are established for residues of glyphosate (N-phosphomethyl)glycine) resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate in or on the following food commodities:

Commodity	Parts per million
* *	* * *
Animal feed, nongrass, group	400
* *	* * *
Grass, forage, fodder and hay, group	300
* *	* * *

* * * * *

[FR Doc. 02–24488 Filed 9–26–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0199; FRL–7200–6]

Triticonazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of triticonazole, (1RS)-(E)-5-[(4-chlorophenyl)methylene]-2,2-dimethyl-1-(1 *H*-1,2,4-triazol-1-ylmethyl)cyclopentanol, in or on barley, grain; barley, hay; barley, straw; wheat, forage; wheat, grain; wheat, hay; and wheat, straw. Aventis CropScience USA requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). Subsequent to the filing of this petition, Bayer Corporation acquired Aventis CropScience to form Bayer Crop Science. Therefore, the registrant is now Bayer Crop Science.

DATES: This regulation is effective September 27, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0199, must be received on or before November 26, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0199 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller. mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*.You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://

www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0199. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 14, 2002 (67 FR 11476) (FRL–6825–1), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 9F6051) by Aventis Crop Science USA, 2 TW Alexander Drive, Research Triangle Park, NC 27709. This notice included a summary of the petition prepared by Aventis CropScience USA, the registrant. Subsequent to the filing of this petition, Bayer Corporation acquired Aventis CropScience to form Bayer Crop Science. Therefore, the registrant is now Bayer Crop Science. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.583 be amended by establishing tolerances for residues of the fungicide triticonazole, (1RS)-(E)-5-[(4-chlorophenyl)methylene]-2,2-dimethyl-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol, in or on barley, grain; barley, hay; barley, straw; wheat, forage; wheat, grain; wheat, hay; and wheat, straw at 0.05 parts per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of triticonazole, (1RS)-(E)-5-[(4-chlorophenyl)methylene]-2,2-dimethyl-1-(1 *H*-1,2,4-triazol-1-ylmethyl)cyclopentanol, on barley, grain; barley, hay; barley, straw; wheat, forage; wheat, grain; wheat, hay; and wheat, straw at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by triticonazole are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90-Day oral toxicity in rodents-rat	NOAEL = M: 2, F: 22.3 mg/kg/day LOAEL = M: 19.8, F: 1183.5 mg/kg/day based on M: Increases in the incidence of adrenocortical fatty vacuolation in males receiving ≥ 250 ppm, F: Hair loss, decreased food efficiencies, adrenocortical fatty vacuolation, zona reticularis degeneration, centriacinar hepatocytic fatty vacuolation, and more severe anisocytosis and spherocytosis in females receiving ≥12,500 ppm.
870.3200	28-Day dermal toxicity-rat	NOAEL = Dermal and systemic: 1,000 mg/kg/day (limit dose). LOAEL = Were not identified.
870.3700	Prenatal developmental in rodents-rat	Maternal NOAEL = 200 mg/kg/day LOAEL = 1,000 mg/kg/day based on reduction in mean body weight gain from GD 12–16. Developmental NOAEL = 200 mg/kg/day LOAEL = 1,000 mg/kg/day based on treatment-related increases in unilateral and bilateral supernumerary ribs.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3700	Prenatal developmental in nonrodents-rabbit	Maternal NOAEL = 25 mg/kg/day LOAEL = 50 mg/kg/day based on decreased body weight gain, reduced food consumption, and mortality. Developmental NOAEL = 50 mg/kg/day LOAEL = 75 mg/kg/day based on cranial variations, abortion, and increased pre- and post-implantation losses.
870.3800	Reproduction and fertility effects-rat	Parental/Systemic NOAEL = 37.5 mg/kg/day LOAEL = 250 mg/kg/day based on reduced body weights of the F_0 females and the F_1 males and females, F_0 maternal mortality, and microscopic lesions in the adrenal gland of F_0 and F_1 males and females. Reproductive NOAEL = 37.5 mg/kg/day LOAEL = 250 mg/kg/day based on decreased fertility of the F_1 animals, reduced F_1 and F_2 pup survival, and reduced F_1 and F_2 pup body weight.
870.4100	Chronic toxicity dogs	NOAEL = 25 mg/kg/day LOAEL = 150 mg/kg/day based on decreased absolute body weights of females, decreased weight gain by males and females, and treatment-related toxicity to the eye, liver, and adrenals.
870.4200	Carcinogenicity rats	NOAEL = M: ≥ 203.6, F: 38.3 mg/kg/day LOAEL = M: Adverse effects were not observed, F: 286.6 mg/kg/day based on decreased body weight and body weight gain, adrenal cortical and liver toxicity.
870.4300	Carcinogenicity mice	NOAEL = M: 17.4; F: 20.1 mg/kg/day LOAEL = M: 202.2, F: 209.5 mg/kg/day based on decreased body weight gain and liver toxicity. No significant increase in the incidence of neoplastic lesions. No evidence of compound-induced carcinogenicity.
870.5250	Gene mutation	There was no evidence of induced mutant colonies over background.
870.5300	Cytogenetics	There was no consistent evidence of chromosomal aberrations induced over background.
870.5375	Chromosome aberration	There was no significant increase in the frequency of micronucleated polychromatic erythrocytes in bone marrow after any tested triticonazole dose at any harvest time.
870.5395	Micronucleus	There was no evidence that unscheduled DNA synthesis, as determined by radioactive tracer procedures [nuclear silver grain counts] was induced.
870.6200	Acute neurotoxicity screening battery-rat	NOAEL = 400 mg/kg/day LOAEL = 2,000 mg/kg/day (limit dose) based on dose-related increases in motor activity in both sexes...
870.6200	Subchronic neurotoxicity screening battery-rat	NOAEL = M: 695; F: 820 mg/kg/day LOAEL = Not established.
870.6300	Developmental neurotoxicity	Study is not available. Identified this as a data gap.
870.7485	Metabolism and pharmacokinetics-rat	Study is not available. Identified this as a data gap.
870.7600	Dermal penetration-rat	Dermal Absorption Factor [C^{14}]: 2 %.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when

100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for triticonazole used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR TRITICONAZOLE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13–50 years of age)	NOAEL = 50 mg/kg/day UF = 100 Acute RfD = 0.5 mg/kg/day	FQPA SF = 1 aPAD = acute RfD ÷ FQPA SF = 0.5 mg/kg/day	Developmental study-rabbit Developmental LOAEL = 75 mg/kg/day based on cranial variations, abortions, and increased pre-and post-implantation losses.
Acute Dietary (General population including infants and children)	NOAEL = 400 mg/kg/day UF = 100 Acute RfD = 4 mg/kg/day	FQPA SF = 1 aPAD = acute RfD ÷ FQPA SF = 4 mg/kg/day	Acute Neurotoxicity study LOAEL = 2,000 mg/kg/day based on dose-related increases in motor activity in both sexes.
Chronic Dietary (All populations)	NOAEL= 17.4 mg/kg/day UF = 100 Chronic RfD = 0.17 mg/kg/day	FQPA SF = 1x cPAD = chronic RfD ÷ FQPA SF = 0.17 mg/kg/day	Carcinogenicity study-mouse LOAEL = M: 202.2, F: 209.5 mg/kg/day based on decreased body weight gain and liver toxicity.
Incidental Oral Short-Term	NOAEL= 25 (Maternal toxicity)	LOC for MOE = 100 (Residential)	Developmental study-rabbit Maternal LOAEL = 50 mg/kg/day based on decreased body weight gain, reduced food consumption, and mortality.
Incidental Oral Intermediate-Term	NOAEL = 17.4	LOC for MOE = 100 (Residential)	Carcinogenicity study-mouse LOAEL = M: 202.2, F: 209.5 mg/kg/day based on decreased body weight gain and liver toxicity.
Short-Term Inhalation (1 to 7 days) (Residential)	Inhalation (or oral) study NOAEL= 25 mg/kg/day (inhalation absorption rate = 100%) (maternal toxicity)	LOC for MOE = 100 (Residential)	Developmental study-rabbit Maternal LOAEL = 50 mg/kg/day based on decreased body weight gain, reduced food consumption, and mortality.
Intermediate-Term Inhalation (1 week to several months) (Residential)	Inhalation (or oral) study NOAEL = 17.4 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Carcinogenicity study-mouse LOAEL = M: 202.2, F: 209.5 mg/kg/day based on decreased body weight gain and liver toxicity.
Long-Term Inhalation (Several months to lifetime) (Residential)	Inhalation (or oral) study NOAEL= 17.4 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Carcinogenicity study-mouse LOAEL = M: 202.2, F: 209.5 mg/kg/day based on decreased body weight gain and liver toxicity.
Cancer			This fungicide has not been classified. While the Agency has acceptable data to assess carcinogenicity in both sexes of mice and female rats, acceptable data are not available in male rats. Since the doses tested in male rats were too low to assess the carcinogenic potential for triticonazole, the cancer risk assessment was conducted using a potency factor (Q1*) of 8.56×10^{-3} based on data available at lower doses in the carcinogenicity study in male rats.

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

Due to the lack of adequate carcinogenicity data in male rats, the Agency is not currently able to classify triticonazole in terms of its carcinogenicity. To assess the potential cancer risk associated with triticonazole, the Agency analyzed the pituitary gland and skin tumors seen in the male rat carcinogenicity data along with tumor data for female rats (pituitary adenomas and carcinomas; mammary gland fibroadenomas) and male mice (pulmonary adenomas and carcinomas, and liver adenomas), and female mice (pulmonary adenomas and carcinomas). Structure-Activity data for other triazole fungicides indicate that some are carcinogenic while others are not. For these uses, the Agency developed a Q1* based upon the doses in the male rat carcinogenicity study and the apparent increase in tumor incidence to provide a ''worst case'' upper limit on cancer. It is unclear from the currently available data whether this apparent increase in tumor incidence in male rats is statistically significant. Therefore, by assuming that the increase in tumor incidence is statistically significant, the use of the Q1* approach is worst-case.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Triticonazole is a new chemical and currently there are no tolerances established in 40 CFR 180.583. Risk assessments were conducted by EPA to assess dietary exposures from triticonazole in food as follows:

i. *Acute Exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A Tier I acute DEEM™ analysis was performed. This analysis assumed tolerance-level residues and 100 percent crop treated (PCT).

ii. *Chronic Exposure*. In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residues and 100% crop treated (CT) estimates were assumed.

iii. *Cancer*. The cancer dietary risk assessment was conducted using a potency factor (Q1*) of 8.56×10^{-3}, based on male CD rat pituitary combined adenomas and carcinoma tumor rates from the rat carcinogenicity study. Although the Agency determined that the doses tested in both sexes of mice and female rats were adequate to assess the carcinogenic potential of triticonazole, the doses tested in male rats were too low. A hypothetic Q1* value has been calculated as a worse-case, upper bound estimate of cancer risk until a partial carcinogenicity study in male rats, in which higher dose levels are evaluated, becomes available. The cancer risk estimate (food only) for the U.S. population (total) is 7.0×10^{-7}. This risk estimate is based upon a dietary exposure of 0.000082 mg/kg/day.

In conducting this chronic (cancer) dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic (cancer) exposure assessments: Tolerance level residues and 100% CT estimates were assumed.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for triticonazole in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of triticonazole.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to triticonazole they are further discussed in the aggregate risk sections in Unit III.E.

Based on the PRZM/EXAMS and SCI-GROW models, the estimated environmental concentrations (EECs) of triticonazole for acute exposures are estimated to be 0.9 parts per billion (ppb) for surface water and 0.008 ppb for ground water. The EECs for chronic exposures are estimated to be 0.6 ppb for surface water and 0.008 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Triticonazole is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the

cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether triticonazole has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, triticonazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that triticonazole has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. The Agency concluded that there is no concern for pre- and/or postnatal toxicity resulting from exposure to triticonazole. Developmental toxicity studies showed that triticonazole had limited maternal toxicity, with no significant evidence of increased sensitivity or susceptibility to offspring. In a developmental toxicity study on rats, there were no compound-related deaths, abortions, or clinical signs of toxicity throughout the study period. Based on reduction in mean body weight gain, the maternal toxicity LOAEL is 1,000 mg/kg/day and the NOAEL is 200 mg/kg/day. Treatment did not cause any statistically significant or treatment-related changes in gestational or cesarean section parameters at any treatment level. Based on a treatment-related increase in unilateral and bilateral supernumerary ribs, the developmental toxicity LOAEL is 1,000 mg/kg/day and the developmental NOAEL is 200 mg/kg/day. In a developmental study on rabbits, there was maternal toxicity. Based on decreased body weight gain after dosing initiation, reduced food consumption, and mortality, the LOAEL for maternal toxicity is 50 mg/kg/day and the NOAEL is 25 mg/kg/day. No treatment-related increased incidences of external or visceral malformations/variations were observed in any group as compared with the controls. In the high-dose group slight increases in the percent of fetuses with variations in midline cranial sutures were observed. Based on cranial variations, abortion, and pre- and post-implantation losses, the developmental LOAEL is 75 mg/kg/day and the NOAEL is 50 mg/kg/day. In a two-generation reproduction study with rats the systemic parental LOAEL is 250 mg/kg/day based on reduced body weights of F_0 females and F_1 males and females and microscopic lesions in the adrenal gland of F_0 and F_1 males and females. The reproductive NOAEL is 37.5 mg/kg/day and the LOAEL is 250 mg/kg/day based on F_0 maternal mortality, decreased fertility of the F_1 animals, reduced F_1 and F_2 pup survival and body weights.

3. *Conclusion*. There is a complete toxicity data base for triticonazole and exposure data are complete or are estimated based on data that reasonably accounts for potential exposure. EPA determined that the 10X safety factor to protect infants and children should be removed. The FQPA factor is removed for the following reasons:

- The toxicological data base is complete for FQPA assessment.
- There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure.
- The requirement of a developmental neurotoxicity study is not based on criteria reflecting special concern for the developing fetuses or young which are generally used for requiring a DNT study - and a safety factor (e.g., neuropathy in adult animals; CNS malformations following prenatal exposure; brain weight or sexual maturation changes in offspring; and/or functional changes in offspring) - and, therefore, does not warrant an FQPA safety factor.
- The dietary (food and drinking water) and residential exposure assessments will contain all identified metabolites and/or degradates of concern and will not underestimate the potential exposures for infants and children.

The Agency has identified the need for a developmental neurotoxicity study for this compound based upon the following considerations:

- Clinical signs indicative of neurotoxicity in the rat and mice, acute oral and inhalation toxicity studies; micronucleus assay; and chronic toxicity study in the dog.
- Concern for structure-activity relationship. Triticonazole is structurally related to triademenol, biteranol, uniconazole, propiconazole, etaconazole, azaconazole, hexaconazole, and cyproconazole. All of these compounds, except etaconazole and hexaconazole, have shown a developmental toxicity LOAEL below the maternal toxicity LOAEL in rats and/or rabbits.

Although EPA has required submission of a developmental neurotoxicity study (DNT) for triticonazole, EPA believes it has sufficient reliable toxicity data to make a safety finding for infants and children without use of the additional 10X safety factor. The DNT study will help to complete the overall picture of triticonazole's neurotoxicity profile; however, the toxicity data currently available to the Agency indicate that the DNT is unlikely to affect the manner in which triticonazole is regulated. Three considerations are of importance here. First, the requirement for the DNT for triticonazole was based only on the presence of clinical signs indicative of neurotoxicity in adult animals and the concern for Structure-Activity Relationship (similar chemicals demonstrating neurotoxicity in adult animals). Generally, a DNT is not requested unless the underlying data reveal some special concern for the developing fetuses or young (e.g., neuropathy in adult animals; CNS malformations following prenatal exposure; brain weight or sexual maturation changes in offspring; and/or functional changes in offspring). No such evidence was seen in triticonazole studies. Second, although the request for the DNT indicates some uncertainty regarding neurotoxic effects, existing triticonazole toxicity data demonstrate that neurotoxic effects are unlikely to be a regulatory endpoint other than with regard to acute effects for the general population and that even here the overall conservativeness of the EPA assessment indicates that it is unlikely that the DNT results will cause any regulatory change. The available data show that the neurotoxic effects resulting from triticonazole exposure all occurred at dose levels far exceeding the levels chosen for making risk evaluations and regulatory

determinations. In other words, a large margin of safety already exists to protect the young against any potential neurotoxic effects that might be seen in the DNT. Clinical signs of neurotoxicity (the reason for requiring a DNT) were seen only at a very high dose (2,000 mg/kg/day; twice the Limit Dose) in the acute neurotoxicity study. In the subchronic neurotoxicity, no evidence of neurotoxicity or neuropathology was seen at the highest dose tested that approached the Limit Dose. The NOAEL was 695 mg/kg/day in males and 820 mg/kg/day in females; a LOAEL was not established in the subchronic neurotoxicity study.

In contrast, the NOAEL of 50 mg/kg/day used for acute dietary risk assessment for Females 13–50 years of age (i.e. pre-natal children) is 8X lower than the NOAEL of 400 mg/kg/day established following a single dose in the acute neurotoxicity study and the LOAELs from these two studies differ by approximately 27X. Similarly, the NOAEL of 17.4 mg/kg/day used for chronic dietary risk assessment is 40X lower than the NOAEL of 700 mg/kg/day established following repeated dosing in the subchronic neurotoxicity study. Additionally, although the NOAEL of 400 mg/kg/day from the acute neurotoxicity study was used for acute dietary risk assessment for the General Population including infants and children the choice of this NOAEL was itself very conservative. The NOAEL is believed to be conservative since the NOAEL could be an artifact of the dose selection (0, 80, 400 or 2,000 mg/kg/day). Because of this wide gap in the doses tested, the ''true'' NOAEL could have been higher (i.e., somewhere between 400 and 2,000 mg/kg/day) than the one established. Additionally, the NOAEL of 400 mg/kg/day used for acute dietary risk assessment for the General Population is 5X lower than the dose (2,000 mg/kg/day) that caused neurotoxic effects in that study. Third, in addition to the DNT being requested due to effects seen in adult animals (and not due to neurological findings in the young) and the large margin of safety between these effects and regulatory endpoints, it is worth reiterating that there is no evidence (quantiative or qualitative) of increased susceptibility in the pre-natal developmental or two generation reproduction toxicity studies.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to triticonazole will occupy < 1% of the aPAD for all population subgroup. In addition, there is potential for acute dietary exposure to triticonazole in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO TRITICONAZOLE

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	4	< 1.0	0.9	0.008	1.4×10^5
All infants	4	< 1.0	0.9	0.008	4.0×10^4
Females (13–50 years)	0.5	< 1.0	0.9	0.008	1.5×10^4
Children (1–6 years)	4	< 1.0	0.9	0.008	4.0×10^4
Males (13–19 years)	4	< 1.0	0.9	0.008	1.4×10^5

The EECs for assessing acute aggregate dietary risk are 0.008 µg/L (for groundwater, based on SCI GROW) and 0.9 µg/L (in surface water, based on PRZM/EXAMS). The back-calculated DWLOCs (Table 3) for assessing acute aggregate dietary risk range from 15,000 µg/L for the population subgroup females (13 to 50 years old) to 140,000 µg/L for the U.S. population and males (13 to 19 years old).

The SCI GROW and PRZM/EXAMS acute EECs are less than the Agency's level of comparison (the DWLOC value for each population subgroup) for

triticonazole residues in drinking water as a contribution to acute aggregate exposure. EPA thus concludes with reasonable certainty that residues of triticonazole in drinking water will not contribute significantly to the aggregate acute human health risk and that the acute aggregate exposure from triticonazole residues in food and drinking water will not exceed the Agency's level of concern (100% of the Acute PAD) for acute dietary aggregate exposure by any population subgroup. EPA generally has no concern for exposures below 100% of the Acute PAD, because it is a level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to the health and safety of any population subgroup. This risk assessment is considered high confidence, very conservative, and very protective of human health.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to triticonazole from food will utilize < 1% of the cPAD for all population subgroups. There are no residential uses for triticonazole that result in chronic residential exposure to triticonazle. In addition, there is potential for chronic dietary exposure to triticonazole in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO TRITICONAZOLE

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.17	< 1.0	0.6	0.008	5.9×10^3
All infants	0.17	< 1.0	0.6	0.008	1.7×10^3
Children (1–6 years)	0.17	< 1.0	0.6	0.008	1.7×10^3
Females (13–50 years)	0.17	< 1.0	0.6	0.008	5.1×10^3
Males (55 years +)	0.17	< 1.0	0.6	0.008	5.9×10^3

The EECs for assessing chronic aggregate dietary risk are 0.008 µg/L (for groundwater) and 0.6 µg/L (for surface water). The back-calculated DWLOCs (Table 4) for assessing chronic aggregate dietary risk range from 1,700 µg/L for the population subgroups. All infants and children (1 to 6 years old) to 5,900 µg/L for the U.S. population and males (55 years +).

The SCI GROW and PRZM/EXAMS chronic EECs are less than the Agency's level of comparison (the DWLOC value for each population subgroup) for triticonazole residues in drinking water as a contribution to chronic aggregate exposure. EPA thus concludes with reasonable certainty that residues of triticonazole in drinking water will not contribute significantly to the aggregate chronic human health risk and that the chronic aggregate exposure from triticonazole residues in food and drinking water will not exceed the Agency's level of concern (100% of the Chronic PAD) for chronic dietary aggregate exposure by any population subgroup. EPA generally has no concern for exposures below 100% of the Chronic PAD, because it is a level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to the health and safety of any population subgroup. This risk assessment is considered high confidence, very conservative, and very protective of human health.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Triticonazole is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Triticonzole is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. As summarized previously, the cancer risk estimate (food only) for the U.S. population (total) is 7.01×10^{-7}. This risk estimate is based upon an exposure of 0.000082 mg/kg/day. The results of this dietary exposure analysis should be viewed as very conservative (health protective). Refinements such as use of PCT information and/or anticipated residue values would yield even lower estimates of chronic dietary exposure.

The EECs for assessing chronic (cancer) aggregate dietary risk are 0.008 µg/L (for ground water) and 0.4 µg/L (for surface water). The back-calculated DWLOC) for assessing chronic (cancer) aggregate dietary risk is 1.2 µg/L.

The SCI-GROW and PRZM/EXAMS chronic (cancer) EECs are less than the Agency's level of comparison for triticonazole residues in drinking water as a contribution to chronic (cancer) aggregate exposure. The Agency thus concludes with reasonable certainty that residues of triticonazole in drinking water will not contribute significantly to the aggregate chronic (cancer) human health risk and that the chronic (cancer) aggregate exposure from triticonazole residues in food and drinking water will not exceed the Agency's level of concern (i.e. cancer risk estimate in the range of 1×10^{-6}) for chronic (cancer) dietary aggregate exposure by the U.S. population. EPA generally has no concern for exposures which result in a cancer risk estimate in the range of or below 1×10^{-6}, because it is a level at which daily aggregate dietary exposure over a lifetime will pose no greater than negligible risks to the health and safety of any population subgroup. This risk assessment is considered high confidence, very conservative, and very protective of human health.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children

from aggregate exposure to triticonazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The petitioner has proposed liquid chromatography/mass spectrometer (LC/MS) and liquid chromatography/mass spectrometer/mass spectrometer (LC/MS/MS) methods (Aventis Method MS 148.02) for determining residues and enforcing tolerances for uses of triticonazole. The methods determine residues of triticonazole and two of its dihydroxy metabolites (RPA 404886 and RPA 406341). Each residue is measured individually in/on wheat and barley RACs and processed commodities. The Agency has determined that the residues of concern in plants for the proposed seed treatment uses are triticonazole *per se*. The LC/MS/MS method was used in the submitted crop field trials and processing studies. The validated level of quantitation (LOQ) based on the field trial and processing data for the LC/MS/MS method is 0.005 ppm for residues in forage, straw and grain. The petitioner submitted adequate concurrent method recovery data for the LC/MS/MS method in conjunction with the crop field trials and processing studies on wheat and barley. A successful independent laboratory validation (ILV) (MRID 44904518) was conducted for the LC/MS and LC/MS/MS methods on wheat forage. The Agency is conducting a petition method validation (PMV) for Analytical Method MS 148.02, Revision 2 for both LC/MS and LC/MS/MS detection methods for use with wheat grain, forage, and straw. Pending a successful EPA petition method validation of Aventis Method 148.02, the method is adequate for enforcement of the proposed tolerances on wheat and barley resulting from the proposed seed treatment uses. The petitioner will be required to make any modifications or revisions to the proposed method resulting from EPA's validation.

The Agency currently has adequate fortification recovery data for triticonazole from wheat and barley commodities. The method was adequately validated by an independent laboratory for use with a representative commodity (wheat forage).

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican maximum residue limits (MRLs) for residues of triticonazole in/on wheat and barley commodities. Therefore, no compatibility issues exist with regard to the proposed U.S. tolerances.

V. Conclusion

Therefore, the tolerance is established for residues of triticonazole, (1RS)-(E)-5-[(4-chlorophenyl)methylene]-2,2-dimethyl-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol, in or on barley, grain; barley, hay; barley, straw; wheat, forage; wheat, grain; wheat, hay; and wheat, straw at 0.05 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0199 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 26, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your written request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0199, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of

the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 19, 2002.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.583 is added to subpart C to read as follows:

§ 180.583 Triticonazole; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide triticonazole, (1RS)-(E)-5-[(4-chlorophenyl)methylene]-2,2-dimethyl-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol, from the treatment of seed prior to planting in or on raw agricultural commodities as follows:

Commodity	Parts per million
Barley, grain	0.05
Barley, hay	0.05
Barley, straw	0.05
Wheat, forage	0.05
Wheat, grain	0.05
Wheat, hay	0.05
Wheat, straw	0.05

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 02–24650 Filed 9–26–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0233; FRL–7198–8]

Pseudozyma flocculosa strain PF-A22 UL; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Pseudozyma flocculosa* strain PF-A22 UL in or on all food commodities. Plant Products Co. Ltd., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Pseudozyma flocculosa* strain PF-A22 UL.

DATES: This regulation is effective September 27, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0233, must be received on or before November 26, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0233 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Sharlene R. Matten, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–0514; e-mail address: matten.sharlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0233. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 30, 2000 (65 FR 52749) (FRL–6739–8), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP 0F6136) by Plant Products Co. Ltd., f314 Orenda Rd., Brampton, Ontario, Canada L6T 1G1. This notice included a summary of the petition prepared by the petitioner Plant Products Co. Ltd. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Pseudozyma flocculosa* strain PF-A22 UL in or on all food commodities.

III. Risk Assessment

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the

pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, section 408(b)(2)(D) requires that the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Pseudozyma flocculosa was isolated in 1986 from the leaves of red clover, *Trifolium pratense*, infected with powdery mildew, *Erysiphe polygoni*, by researchers at Agriculture and Agri-Food Canada, Harrow, Ontario. Initially, this organism was erroneously identified as a new ascomycetous yeast with an anamorphic state in the broad genus *Sporothrix* and a teleomorphic state in the genus *Stephanoascus*. In 1995, its taxon was changed to *P. flocculosa* following ribosomal DNA analysis. The genus *Pseudozyma* contains other smut-like anamorphs, including *P. rugulosa* (formerly *Sporothrix rugulosa*). *P. flocculosa* is a phyllosphere epiphyte and hyperparasite of primarily powdery mildew but has been isolated in association with other leaf-surface molds. It is widely distributed in North America (Canada and USA) and in Europe on aerial plant surfaces in field or greenhouse agricultural ecosystems.

P. flocculosa antagonizes a number of different powdery mildew fungi (*Sphaerotheca pannosa var. rosae, Sphaerotheca fulginea, Erysiphe graminis var. tritici* and *Erysiphe polygoni*) on many different plants in greenhouse and field environments when the relative humidity is greater or equal to 70%. This fungus is a necrotroph mycoparasite that kills susceptible target host cells upon contact or in close proximity. Rapid death and collapse of host cells without penetration is brought about by the secretion of three fungitoxic unsaturated C-17 fatty acids (9-heptadecenoic acid, 6-methyl-9-heptadecenoic acid and 4-methyl-7,11-heptadecadienoic acid) and an acyclic norterpene (2, 6, 10, 14, 18-pentamethyl-2, 6, 8, 10, 12, 14, 17-nonadecaheptene-1,19-diol). The fungitoxins disrupt susceptible plasma membranes and cytoplasmic organelles within 30 minutes of exposure. The inhibitory response includes a loss of proteins and electrolytes. After 24 hours, the host cells rapidly collapse and die as a result of the activity of the fungitoxins on the host cell's membranes and lipids. Sensitivity to the unsaturated C-17 free fatty acids is related to a high degree of unsaturation of phospholipid fatty acids and a low proportion of sterols.

P. flocculosa strain PF-A22 UL was considered of low toxicity and no pathogenicity based on the results of the Tier I toxicology studies. Tier II and Tier III studies were not required because the results from the Tier I studies were sufficient to satisfy guideline requirements. On the basis of the studies submitted, it was considered a Toxicity Category III pesticide for acute oral effects due to the amount dosed only, and Toxicity Category IV for dermal and primary dermal irritation health effects. These and additional toxicology studies are summarized below and in more detail in the Product Monograph for *Pseudozyma flocculosa* strain PF-A22 UL which is found in the OPP docket number OPP–2002–0233.

1. *Acute oral toxicity/pathogenicity study (OPPTS 885.3050) (Master Record Identification (MRID) numbers 451152–04 and 453634–01).* No signs of toxicity or pathogenicity were noted when Sporodex WP, a wettable powder formulation containing 2.0% (weight/weight) *P. flocculosa* strain PF-A22 UL was administered to rats via the oral route.

In an acute oral toxicity study, groups of fasted 6-7 week old Fisher 344 rats (12/sex) were administered a single oral dose of Sporodex WP in USP sterile water for injection at doses of 5.8×10^8 colony-forming units (CFU) per animal for males and 5.6×10^8 CFU per animal for females. An equal number of animals were dosed with heat-killed test substance and four animals/sex served as untreated controls. The animals were then observed for a period of up to 21 days with interim scheduled sacrifices. No effect on body weight gain and no apparent signs of treatment-related toxicity, infectivity or pathogenicity were observed in any of the treated animals during the study period. Clearance of the test organism occurred by, or prior to, post-treatment day 7. Based on the results of this study, Sporodex L and its active ingredient, *P. flocculosa*, is not considered toxic or pathogenic to male or female Fisher 344 rats.

2. *Acute pulmonary toxicity/pathogenicity study (OPPTS 885.3150) (MRID numbers 451152–06 and 453634–01).* The potential toxicity and pathogenicity of *P. flocculosa* was tested by observing the effects following a single intratracheal instillation of 3.2×10^7 CFU of the test organism (TS) to each of 12 male and 12 female CD rats. An equal number of animals were treated with heat-killed test substance (KTS) and four animals/sex served as untreated controls. Animals were observed for up to 14 days with interim scheduled sacrifices.

A total of 15 rats (3/8 male and 2/8 female TS-dosed rats and 6/8 male and 4/8 female KTS-dosed rats) died on days 2 and 3. Laboured respiration, rough hair coat, ocular discharge and nasal discharge were observed in both TS- and KTS-dosed rats. Hunched posture and lethargy were also observed in one female and one male TS-dosed rat, respectively. The presence or absence of clinical symptoms were not indicative of spontaneous deaths.

Due to the large number of spontaneous deaths and a number of missed data collections, data for evaluating effects on body weights, food consumption and relative organ weight were limited. At the end of the 14–day long study, administration of *P. flocculosa* did not have a statistically significant effect on body weight. Analyses of daily food consumption and relative organ weights were skewed as they were either not determined or did not include animals that died prior to their scheduled sacrifice dates.

At necropsy, liver lesions and lesions and enlargement of the lung and spleen were observed in both TS- and KTS-dosed rats. Confluent dark areas were also seen in the kidneys of a single male TS-dosed rat. These necropsy findings were considered consistent with the

method of dosing and the body's normal immunological response to a foreign substance.

Pseudozyma flocculosa was detected in the lungs and lymph nodes and the stomach and small intestine of TS-dosed animals only. Counts in these tissues were below the limit of detection by day 7.

Based on this study, *P. flocculosa* is toxic, but not infective or pathogenic, at the dose administered when introduced by the intratracheal route to male and female CD rats. This acute pulmonary study, however, was originally classified as unacceptable due to major deficiencies in the collected data and a possible dosing error, as indicated by the presence of the microbial pest control agent (MPCA) in the stomach and small intestines on the day of dosing. However, there was relevant pathogenicity information that indicated clearance of the MPCA. Thus, this study is considered to be supplemental because it provides acceptable information regarding infectivity/pathogenicity; however, this study does not differentiate the cause of certain mortalities in the TS and KTS treatments. A confirmatory acute pulmonary toxicity/pathogenicity study using the technical grade of the active ingredient (TGAI) and testing of the sterile filtrate from the production culture will therefore be required to provide this additional information as a condition of registration.

3. *Acute pulmonary range-finding study (OPPTS 885.3150) (MRID numbers 451152–07 and 453634–01).* In order to determine whether the test substance (in both its viable and non-viable forms), *P. flocculosa*, was the cause of the deaths, a subsequent acute pulmonary range-finding toxicity study was conducted. In this range-finding study, groups of young adult CD rats (5/sex/dose level) were exposed by the intratracheal route to *P. flocculosa* (4.2×10^7 CFU/mL) in ASTM Type 1 water at doses of 4.2×10^7, 3.4×10^7, 6.8×10^6 and 3.4×10^6 CFU/animal. Animals were then observed for 14 days. There were no mortalities and all animals gained weight during the study. Rough hair coat occurred in a dose-dependent manner with all 5 animals/sex exhibiting this symptom at the highest dose of 4.2×10^7 CFU/animal. One female dosed with 4.2×10^7 CFU experienced tremors, closed eyes and rough hair coat. *Pseudozyma flocculosa* was classified as being of slight toxicity (EPA Toxicity Category IV) based on adverse effects observed in some test animals.

This acute pulmonary study was considered supplemental. According to USEPA OPPTS 885.3150, the minimum dose is 10^8 units of the MPCA per test animal. The maximum dose level used in this study, however, was only 4.2×10^7 CFU/animal. Furthermore, infectivity was not addressed; however, the acute pulmonary toxicity/pathogenicity study did address infectivity sufficiently. Consequently, this study does not satisfy the guideline requirement for an acute pulmonary study (OPPTS 885.3150) in the rat. EPA, in considering the two studies together, believes that there are sufficient data with which to determine the toxicity and pathogenicity of *Pseudozyma flocculosa*. As any potential inhalation risk that is raised by these studies is primarily a worker risk, EPA is requiring that a respirator be worn by workers to limit any inhalation exposures. In addition, a Restricted-Entry Interval (REI) of 4 hours is required for early entry (post-application) workers or other persons entering treated greenhouses. Finally, a confirmatory acute pulmonary toxicity/pathogenicity study using the TGAI and testing of the sterile filtrate from the production culture will be required as a condition of registration.

4. *Intraperitoneal toxicity/infectivity study (OPPTS 885.3200) (MRID numbers 451152–08 and 453634–01).* In an acute intraperitoneal toxicity/infectivity study, groups of young adult CD rats (4/sex/scheduled sacrifice date) were exposed by the intraperitoneal route to an undiluted suspension of *P. flocculosa* (TS) at a dose of 3.5×10^7 CFU/animal (in 1.0 mL). Animals were then observed for up to 14 days. An equal number of young adult CD rats were similarly injected with heat-killed test substance (KTS). An undosed naive control (NC) group consisting of 4 rats/sex was also included in the study. Cage side observation for clinical symptoms was performed daily and animal body weights and food consumption were monitored.

No unscheduled deaths occurred. Designated animals from the TS and KTS groups were sacrificed on days 0, 7, and 14 and gross necropsies were performed. The NC group of animals was sacrificed and necropsied at the end of the 14–day study. Infectivity and clearance were assessed by quantitatively recovering the MPCA from the blood, lungs and lymph nodes, spleen, kidneys, liver, heart, stomach and small intestine, peritoneal fluid, caecum and brain.

No adverse clinical signs were observed at any point of the study in any of the groups of rats. Body weight gain of TS-dosed male rats was significantly decreased while this group's food consumption was significantly increased compared to NC animals. There was no significant difference between KTS-dosed and NC animals in terms of body weight, body weight gain or food consumption. Upon necropsy of TS- and KTS-dosed animals, white nodules and higher relative spleen weights were observed and attributed to a normal immune response to a foreign substance. The detection of *P. flocculosa* in the peritoneal fluid lavage of TS-dosed male rats was consistent with the method of administration. Clearance of *P. flocculosa* from all other tissues and fluids occurred by day 7. No test substance was detected from any of the organs of the KTS-dosed or NC animals.

At the dose administered, *P. flocculosa* was slightly toxic but not pathogenic to male and female CD rats when introduced by the intraperitoneal route.

5. *Acute dermal toxicity/irritation study (OPPTS 885.3100) (MRID numbers 451152–09 and 453634–01).* In an acute dermal toxicity study, a single group of New Zealand White rabbits (5/sex) was dermally exposed to 1.2×10^7 CFU *P. flocculosa* (equivalent to approximately 0.82-0.90 g/kg bw for males and 0.80-0.91 g/kg bw for females), for 24 hours to an area equivalent to approximately 10% of the dorsal skin surface. Following exposure, the animals were observed for a period of 14 days.

No treatment-related signs of toxicity or skin irritation were observed in any animal during the 14–day observation period. At the dose administered, *P. flocculosa* was not considered toxic or irritating to the skin.

6. *Primary eye irritation study (OPPTS 870.2400) (MRID numbers 451152–10 and 453634–01).* Administration of 0.1 g of Sporodex WP to the eyes of rabbits resulted in slight conjunctival redness in 5/6 animals at the 1–hour scoring interval and in 2/6 rabbits at the 24–hour scoring interval. By the 48–hour scoring interval, all signs of ocular irritation had subsided. There were no other adverse clinical symptoms or mortalities during the 7–day observation period. The maximum irritation score (MIS) was 1.7 at the 1–hour scoring interval and the maximum average score (MAS) was 0.22 over the 24–, 48– and 72–hour scoring intervals. Based on the MAS, Sporodex WP was classified as minimally irritating.

7. *Subchronic, chronic toxicity and oncogenicity.* Survival, replication, infectivity, significant toxicity or persistence of the MPCA was not observed in the test animals treated in Tier I acute oral, pulmonary and intravenous toxicity/infectivity tests.

Consequently, higher tier tests involving subchronic and chronic testing, oncogenicity testing, mutagenicity and teratogenicity were not required based on the lack of concerns following analysis of Tier I test results. However, a genotoxicity computer search for *Pseudozyma flocculosa* was conducted. No reports of mammalian toxicity were found in standard biological, chemical and toxicological abstracts. The applicant included computer literature search results to a number of keywords such as *pseudozyma*; tilletiopsis, fate, non target, carcin, mutagen; toxic, pathogen, antibiotic, polyen; sporothrix, sporobolomyces, rhodotorula, phyllosphere yeast; carcinog and teratogen. The literature search covered *AGRICOLA*, Biological Abstracts, CAB Abstracts, CHEMTOX, RTEX and AGRIS databases from 1980 to 1999.

8. *Hypersensitivity (dermal sensitization) study (OPPTS 870.2600).* The applicant has also submitted an acceptable waiver rationale from conducting a dermal sensitization study based on the assumption that most microorganisms contain substances that could elicit a hypersensitivity response. *Pseudozyma flocculosa* is considered a potential sensitizing agent, therefore, the statement, ''POTENTIAL SENSITIZER'' is required on the principal display panels of the technical and end-use formulation labels. The use of personal protective equipment will also be required to mitigate against potential dermal sensitization in occupationally exposed workers/handlers.

9. *Reports of hypersensitivity incidents (OPPTS 885.3400).* Skin sensitizing studies are not considered substitutes for timely reports of hypersensitivity incidents subsequent to registration approval. No adverse effects have been noted among researchers who have worked closely with *P. flocculosa* strain PF-A22 UL for up to 10 years. The applicant will be expected to report any subsequent findings of hypersensitivity or other health incidents to workers, applicators, or bystanders exposed to the MPCA as a condition of registration. Incident reports are to include details such as a description of the MPCA and formulation, frequency, duration and routes of exposure to the material, clinical observations, and any other relevant information.

10. *Effects on the immune systems (OPPTS 880.3800, immune response).* The active ingredient, *P. flocculosa* strain PF-A22 UL, is not known to be a human pathogen nor an endocrine disrupter. The submitted toxicity/pathogenicity studies in the rodent indicate that, following several routes of exposure, the immune system is still intact and able to process and clear the active ingredient. Therefore, no adverse effects to the immune systems are known or expected. Based on this rationale, the registrant waiver request for OPPTS 880.3800 (Immune Response) was found to be acceptable.

V. Aggregate Exposures

A. Dietary Exposure

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Food.* The proposed food use pattern is likely to result in residues in or on food and feed. Residues of the microbial pesticide are likely to be removed from treated food by washing, peeling, cooking and processing. Even if residues are not removed, however, EPA believes that dietary exposure to the microbial agent will result in negligible to no risk to consumers. Although *Pseudozyma* species are ubiquitous in nature and have been isolated from a wide variety of plant surfaces including leaf litter, clover, maize and cucumber, no adverse effects from dietary exposure have been attributed to natural populations of *Pseudozyma flocculosa*. Furthermore, no adverse effects were observed at maximum hazard dose levels in the acute oral toxicity/pathogenicity study and there are no reports of known mammalian toxins being produced by the MPCA. Subchronic and chronic dietary exposure studies were not required because the Tier I acute oral study demonstrated a low level of toxicity and no pathogenicity potential for the active microorganism. Because of the low toxicity profile and low potential exposure of the MPCA expected for the proposed uses, there is no concern for chronic risks posed by dietary exposure for the general population or sensitive subpopulations, such as infants and children. In addition, an extensive literature search yielded no reports of mammalian toxins being produced by *P. flocculosa*. The fungitoxic unsaturated C-17 fatty acids and acyclic norterpene produced by the MPCA have not been reported to be toxic to mammals. Neither this organism nor its close relatives are listed among microbial contaminants of food. Therefore, EPA expects negligible to no dietary risk from exposure to naturally-occurring and isolated *P. flocculosa* strain PF-A22 UL residues.

2. *Drinking water exposure.* Although heavy rainfall likely carries *P. flocculosa* into neighboring aquatic environments, growth and survival of terrestrial fungi such as *P. flocculosa* is limited in such environments. Thus, it is not expected to proliferate in aquatic habitats following incidents of direct or indirect exposure (e.g., runoff from treated greenhouses). Moreover, *P. flocculosa* is not considered to pose a risk to humans from exposure to drinking water because of minimal to non-existent toxicity. Accordingly, drinking water is not specifically screened for *P. flocculosa* as a potential indicator of microbial contamination or as a direct pathogenic contaminant. Both percolation through soil and municipal treatment of drinking water would reduce the possibility of significant transfer of residues to drinking water. Therefore, the potential of exposure and risk via drinking water is likely to be minimal to non-existent for this MPCA.

B. Other Non-Occupational Exposure

The current label does not allow applications to turf, residential or recreational areas. Because the use sites are in greenhouses, exposure to the U.S. population including infants and children in school, residential and daycare facilities is likely to be minimal to non-existent. Consequently, the health risk posed by *P. flocculosa* strain PF A-22 UL from non-occupational dermal and inhalation exposures to the general public, including infants and children, is expected to be negligible to non-existent. Any concerns for potential inhalation risk is for occupational exposures, and as mentioned previously, will be mitigated by the requirement of a respirator and restriction of the reentry interval.

VI. Cumulative Effects

The Agency has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. EPA is not aware of any other bacteria or other substances, besides naturally-occurring strains of *Pseudozyma*, that share a common mechanism of toxicity with this active ingredient. Given the low toxicity and pathogenicity profile of *P. flocculosa*, even if there were any other substances with which *P. flocculosa* shared a

common mechanism of toxicity, no adverse cumulative effects are expected.

VII. Determination of Safety for U.S. Population, Infants and Children

Based on the toxicology data submitted and other relevant information in the Agency's files, there is reasonable certainty no harm will result from aggregate exposure of residues of *Pseudozyma flocculosa* strain PF-A22 UL to the U.S. population, including infants and children, under reasonably foreseeable circumstances when the microbial pesticide product is used as labeled. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on data submitted demonstrating low toxicity at the maximum doses tested and a lack of information showing adverse effects from exposure to naturally occurring *P. flocculosa* as well as a consideration of the product as currently registered and labeled. As a result, EPA establishes an exemption from tolerance requirements pursuant to FFDCA 408(c) and (d) for residues of *Pseudozyma flocculosa* strain PF-A22 UL in or on all food commodities.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. In this instance, based on all the available information, the Agency concludes that *P. flocculosa* strain PF-A22 UL is practically non-toxic to mammals, including infants and children. Thus, there are no threshold effects of concern and, as a result the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply. As a result, EPA has not used a margin of exposure (safety) approach to assess the safety of *P. flocculosa* strain PF-A22 UL.

VIII. Other Considerations

A. Endocrine Disruptors

EPA does not have any information regarding endocrine effects of this microbial pesticide at this time. There is no evidence to suggest that use of *P. flocculosa* strain PF-A22 UL at the proposed concentrations will adversely affect the endocrine system. The active ingredient, *P. flocculosa* strain PF-A22 UL, is not known to be a human pathogen nor an endocrine disrupter. The submitted toxicity/pathogenicity studies in the rodent indicate that, following several routes of exposure, the immune system is still intact and able to process and clear the active ingredient. Therefore, no adverse effects to the endocrine systems are known or expected.

B. Analytical Method(s)

As part of the standard Quality Control measures, the Agency is requiring microbial assays and analytical methods to identify the active ingredient and potential contaminants. Analytical methods are available and sufficient to identify metabolites and contaminants within regulatory levels. All batches containing potential human pathogens are to be destroyed. The MPCA is identified using a combination of morphological traits, molecular techniques and biological activity.

The identification of *Pseudozyma* to the species level is done using a standard mycological approach. *Pseudozyma* species can be differentiated from morphologically similar species such as *Hyalodendron, Tilletiopsis, Sporobolomyces and Sporothrix*. The branching conidiophores of *Pseudozyma* can be confused with those produced by *Hyalodendron*; however, the whole cell hydrolysates of this filamentous basidiomycete contain xylose which is not found in *Pseudozyma. Tilletiopsis* and *Sporobolomyces*, other saprophytic wild yeasts on aerial plant surfaces, are different from *Pseudozyma* in that they produce spores that are forcibly discharged upon sporulation (ballistospores). Furthermore, *Tilletiopsis* species produce a fungus-degrading β-1,3 glucanase that is not produced by *Pseudozyma* species. The genus *Sporothrix* represents a group of anamorphic ascomycetous yeasts such as *Sporothrix schenckii* (type), an animal pathogen. Physiologically, *Pseudozyma* species differ greatly from *Sporothrix* species. Unlike the ascomycetous *Sporothrix* anamorphs, *P. flocculosa* shows positive reactions in Diazonium Blue B and urease tests typical of all basidiomycetous yeasts. Also, the major ubiquinone is Q-10 rather than Q-8 or Q-9 typical of the ascomycetes, *Saccharomycopsis* and *Stephanoascus*.

Strain PF-A22 UL can be differentiated from other strains of *P. flocculosa* using a DNA-based technique called multiplex polymerase chain reaction (multiplex PCR). The multiplex PCR system is essentially a cocktail of different primers which allows the rapid assessment of numerous DNA fragments in a single PCR amplification. The protocol is based on the amplification of two nuclear regions, (ITS and NS), and one mitochondrial region (ML). Those regions were found to be discriminant in the identification of *P. flocculosa* PF-A22 UL.

The integrity and consistency of the MPCA is ensured by two methods. The first method is a DNA-based PCR technique called random amplified microsatellites PCR (RAMS). Microsatellites are hypervariable non-coding regions of DNA within the genome that evolve more rapidly than coding DNA. The other method is a bioassay that measures biological activity. The biological activity of the MPCA is measured by the inhibition zone created when a susceptible organism is grown next to it. Given that the pest controlled, *Sphaerotheca* species, is an obligate biotroph, it cannot be used directly in this bioassay. Instead, a *Phomopsis* species is used because its sensitivity to *P. flocculosa's* fungitoxic secretions is similar.

C. Codex Maximum Residue Level

There are no Codex Maximum Residue Levels or exemption from tolerances for the microbial active ingredient *Pseudozyma flocculosa* strain PF-A22 UL.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part

178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0233 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 26, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0233, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food

retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications '' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 19, 2002.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.1221 is added to subpart D to read as follows:

§ 180.1221 Pseudozyma flocculosa strain PF-A22 UL; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Pseudozyma flocculosa* strain PF-A22 UL in or on all food commodities.

[FR Doc. 02–24651 Filed 9–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0229; FRL–7196–8]

Fenamidone; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fenamidone, [4H-Imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino)-, (S)-], in or on lettuce, head at 15 ppm and lettuce, leaf at 20 ppm. Aventis CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. Subsequent to the filing of this petition, Bayer Corporation acquired Aventis CropScience to form Bayer CropScience. Therefore, the registrant is now Bayer CropScience.

DATES: This regulation is effective September 27, 2002. Objections and requests for hearings, identified by docket control number OPP–2002–0229, must be received on or before November 26, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–2002–0229 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–7740; e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a

beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–2002–0229. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of January 4, 2002 (67 FR 592) (FRL–6812–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of a pesticide petition (PP 1F06300) by Aventis CropScience, 2 Alexander Drive, Research Triangle Park, NC 27709. This notice included a summary of the petition prepared by, the registrant. Subsequent to the filing of this petition, Bayer Corporation acquired Aventis CropScience to form Bayer CropScience. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide [4H-Imidazol-4-one, 3,5-dihydro-5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino)-, (S)-], fenamidone and its metabolites RPA 412708, RPA 412636 and RPA 410193, in or on letttuce, head at 15 ppm and lettuce, leaf at 20 part per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of fenamidone on lettuce, head at 15 ppm and lettuce, leaf at 20 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fenamidone are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–day oral toxicity rodents (rats) Parent compound tested	NOAEL = 29.68/35.39 mg/kg/day in males and females, respectively. LOAEL = 305.48/337.19 mg/kg/day in males and females, respectively, based on decreased body weights, body weight gains, and food consumption in males and females, enlargement and prominent germinal centers in the spleen in males, and periportal vaculation and bile duct hyperplasia in the liver of males.
870.3100	90–day oral toxicity rodents (rats) Parent compound tested	NOAEL = 10.41/12.00 mg/kg/day in males and females, respectively. LOAEL = 68.27/83.33 mg/kg/day based on increased liver weights and incidence of ground glass appearance of the hepatocytes (mostly centrilobular) in the males.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3100	90–day oral toxicity rodents (rats) RPA 412636 plant metabolite tested	NOAEL = 6.419/7.725 mg/kg/day in males and females, respectively. LOAEL = 32.860/39.111 mg/kg/day in the males and females, respectively, based on increased liver weights, liver enlargement, centrilobular hepatocyte hypertrophy and vacuolation, and follicular epithelial height of the thyroid in males.
870.3100	90–day oral toxicity in rodents (rat) RPA 410193 plant metabolite tested	NOAEL = 9.4/11.5 mg/kg/day in males and females, respectively. LOAEL = 93.3/114.9 mg/kg/day in males and females respectively. based on liver enlargement and increased liver weights and chlolesterol in the males and on incidences of centrilobular hepatocellular hypertrophy in the males and females.
870.3100	90–day oral toxicity in rodents (mice) Parent compound tested	NOAEL = 44.49/54.13 mg/kg/day in males and females, respectively. LOAEL = 220.17/273.86 mg/kg/day in males and females respectively based on mild hepatotoxicity as evidenced by increased liver weights and incidences of pale liver and hepatic microvacuolation in the males and decreased cholesterol and increased incidence of prominent lobulation of the liver in the females.
870.3150	90–day oral toxicity in nonrodents (dogs) Parent compound tested	NOAEL = 500 mg/kg/day for males and females. Highest dose tested (HDT). LOAEL = Not determined.
870.3200	21/28-Day dermal toxicity (rat) Parent compound tested	NOAEL = 1000 mg/kg/day in females. Not established in males. LOAEL = 1000 mg/kg/day in males based on decreased body weight, body weight gain, and food consumption. The LOAEL was not observed in females.
870.3700	Prenatal developmental in rodents (rats) Parent compound tested	Maternal NOAEL = 150 mg/kg/day Maternal LOAEL = 1000 mg/kg/day based on decreased body weight, body weight gains, and decreased food consumption. Developmental NOAEL = 150 mg/kg/day Developmental LOAEL = 1000 mg/kg/day based on decreased fetal weights and incomplete ossification.
870.3700	Prenatal developmental in nonrodents (rabbits) Parent compound tested	Maternal NOAEL = 10 mg/kg/day Maternal LOAEL = 30 mg/kg/day based on increased liver weights. Developmental NOAEL = 100 mg/kg/day Developmental LOAEL = not observed
870.3800	Reproduction and fertility effects with acid (rat) Parent compound tested	Parental/Systemic NOAEL = 4.04/5.45 mg/kg/day in males and in females Parental/Systemic LOAEL = 68.6/89.2 mg/kg/day in males and females based on decreased absolute brain weight in F1 females. Reproductive/Offspring NOAEL = 4.04/5.45 mg/kg/day in males and females. Reproductive/Offspring LOAEL = 68.6/89.2 mg/kg/day based on decreased absolute brain weight in F2 female pups.
870.4100	Chronic toxicity in dogs (1 year) Parent compound tested	NOAEL = 100 mg/kg/day in males and females respectively. LOAEL = 1000 mg/kg/day in males and females based on increased liver weight, triglycerides, and biliary proliferation in males, and alkaline phosphatase activity in both sexes.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.4300	Carcinogenicity in rats Parent compound tested	NOAEL = 2.83/3.63 mg/kg/day in males and females, respectively. LOAEL = 7.07/9.24 mg/kg/day in males and females respectively based on an increase in severity of diffuse thyroid C-cell hyperplasia in both sexes. No evidence of carcinogenicity
870.4200	Carcinogenicity in mice Parent compound tested	NOAEL = 47.5/63.8 mg/kg/day in males and females, respectively. LOAEL = 525.5/690.5 mg/kg/day in males and females, respectively based on decreased body weight, weight gain, food efficiency, increased food consumption and absolute and relative (to body) liver weights and liver nuclear pleomophism in both sexes.
870.5265	Gene Mutation with parent	Fenamidone was non-mutagenic when tested up to or cytotoxic levels, in presence and absence of activation, in *S. typhimurium* strains TA98, TA100, TA102, TA1535 and TA1537.
870.5265	Gene Mutation with RPA 410193	RPA 410193 was non-mutatagenic when tested up to 5,000 μg/plate or cytotoxic levels, in presence and absence of activation, in *S. typhimurium* strains Ta98, TA100, TA1535, and TA1537 and *E. coli* strain WP2uvrA.
870.5265	Gene Mutation with RPA 412708	RPA 412708 was non-mutagenic when tested up to 5,000 μg/plate or cytotoxic levels, in presence and absence of activation, in *S. typhimurium* strains TA98, TA100, TA1535, and TA1537 and *E. coli* strain WP2uvrA.
870.5265	Gene Mutation with RPA 412636	RPA 412636 was non-mutagenic when tested up to 5,000 μg/plate or cytotoxic levels, in presence and absence of activation, in *S. typhimurium* strains TA98, TA100, TA1535, and TA1537 and *E. coli* strain WP2uvrA.
870.5300	Mouse lymphoma cell/mammalian activation gene forward mutation assay (L5178Y hgprt) with parent	Fenamidone was non-mutagenic at doses up to the limit of solubility (1600 μg/mL) in both the presence and absence of S9 metabolic activation.
870.5300	Mouse lymphoma cell/mammalian activation gene forward mutation assay (l5178Y hgprt) with RPA 412636.	RPA 412636 was non-mutagenic at doses up to the limit of solubility (1600 μg/mL) in both the presence and absence of S9 metabolic activation.
870.5300	Mouse lymphoma cell/mammalian activation gene forward mutation assay (L5178Y hgprt) with RPA 410193.	RPA 410193 was non-mutagenic at doses up to the limit of solubility (800 μg/mL) in both the presence and absence of S9 metabolic activation.
870.5375	*In vitro* mammalian cytogenetics (Chromosomal aberration assay in human peripheral blood) with parent.	There was evidence of chromosome aberrations induce over background both in the presence and absence of S-9 activation.
870.5395	*In vivo* Mouse Micronucleus with parent.	Fenamidone was negative for chromosomal aberrations in the cytogenetic assay when administered singly or for 2 days to CD-1 mice up to 2,000 mg/kg/day.
870.5395	*In vivo* mouse micronucleus with RPA 412636	RPA 412636 was not clastogenic in the mouse micronucleus test up to 350 mg/kg (HDT).
870.5395	*In vivo* mouse micronucleus with RPA 412708	RPA 412708 was not clastogenic in the mouse micronucleus assay when tested once daily for 2 days up to cytotoxic levels of 150 mg/kg.
870.5395	*In vivo* mouse micronucleus with RPA 410193	RPA 410193 was not clastogenic in the mouse micronucleus assay when tested once daily for 2 days up to cytotoxic levels of 2,000 mg/kg.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5550	Unscheduled DNA synthesis with parent	Fenamidone did not produce any evidence of unscheduled DNA synthesis, as determined by radioactive tracer procedures (nuclear silver grain counts), in rat primary hepatocyte cultures exposed up to cytotoxic levels.
870.5550	Unscheduled DNA synthesis with parent	Fenamidone did not produce any evidence of unscheduled DNA synthesis, as determined by radioactive tracer procedures (nuclear silver grain counts), in rat primary hepatocyte cultures exposed up to cytotoxic levels.
870.6200	Acute Neurotoxicity-rat Parent compound tested	NOAEL = 125 mg/kg/day LOAEL = 500 mg/kg/day based on urination, staining/soiling of the anogenital region, mucous in the feces, and unsteady gait in females.
870.6200	Subchronic Neurotoxicity Screening Battery-rat Parent compound tested	NOAEL = 73.5/83.4 mg/kg/day in males and females, respectively. LOAEL = 392.3/414.2 mg/kg/day in males and females based on decreased absolute brain weight in males, and decreased body weight, weight gains, and food consumption in both sexes.
870.7485	Metabolism and pharmacokinetics - rat Parent compound tested	In a rat metabolism with ^{C}14- labeled fenamidone, Sprague-Dawley rats receive doses of 3 mg/kg (single, low dose), 3 mg/kg x 14 days (repeated low dose) and 300 mg/kg (high dose). Fenamidone was well absorbed and rapidly excreted, primarily in the urine and bile, at the low dose and repeated low dose. At 300 mg/kg, biliary excretion was not measured, although fecal excretion was 50-68% of the dose. Tissue levels of radioactivity were primarily found in the liver at the single low dose and in the thyroid in the repeated and high dose studies. Metabolite identification included RPA 408056 (racemic form of RPA 412708) and RPA 717879 (racemic mixture of RPA 412636)
870.7600	Dermal Penetration-rat Parent compound tested	Dermal penetration approximated 10% using the protocol for 10 hours of exposure.

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species variations.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for fenamidone used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FENAMIDONE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Endpoint for Risk Assessment	Study and Toxicological Effects
Acute Dietary general population including infants and children	NOAEL = 125 mg/kg UF = 300 Acute RfD = 0.43 mg/kg	FQPA SF = 1X aPAD = acute RfD/FQPA SF = 0.43 mg/kg	Acute Neurotoxicity in Rats LOAEL = 500 mg/kg based on urination, staining/soiling of the anogenital region, mucous in the feces, and unsteady gait in the females.
Chronic Dietary all populations	NOAEL= 2.83 mg/kg/day UF = 300 Chronic RfD = 0.01 mg/kg/day	FQPA SF = 1X cPAD = chr RfD/FQPA SF = 0.01 mg/kg/day	2–Year Chronic Toxicity/Carcinogenicity in Rats LOAEL = 7.07 mg/kg/day based on increase in severity of diffuse thyroid C-cell hyperplasia in both sexes.

UF = uncertainty factor, FQPA SF = FQPA safety factor, NOAEL = no observed adverse effect level, LOAEL = lowest observed adverse effect level, PAD = population adjusted dose (a = acute, c = chronic) RfD = reference dose, MOE = margin of exposure, LOC = level of concern.
* The reference to the FQPA safety factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. No tolerances have previously been established for the residues of fenamidone. Risk assessments were conducted by EPA to assess dietary exposures from fenamidone in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The Agency notes that there is a degree of uncertainty in extrapolating exposures for certain population subgroups which may not be sufficiently represented in the consumption surveys (i.e, nursing infants). Therefore, risks estimated for these subpopulations were included in representative populations having sufficient numbers of survey respondents (i.e., all infants or females 13-50 years old). Thus, the population subgroups listed in Table 3 include those subgroups having sufficient numbers of survey repondents in CSFII food consumption survey. The acute dietary exposure analysis assumed tolerance level residues and 100% crop treated (Tier 1 analysis).

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic dietary exposure analysis incorporated average residues from the field trial studies and assumed 100% crop treated. (Tier 2 analysis) The most highly exposed population subgroup for the chronic analysis was children 7-12 years old at 10% cPAD.

TABLE 3.—SUMMARY OF RESULTS FROM ACUTE AND CHRONIC DEEM™ ANALYSES OF FENAMIDONE

Population Subgroup	Acute Dietary		Chronic Dietary	
	Dietary Exposure (mg/kg/day)	%aPAD	Dietary Exposure (mg/kg/day)	%cPAD
U.S. population - total	0.016993	4	0.000938	9
All Infants (<1 year old)	0.0	<1	0.000016	<1
Children (1–6 years old)	0.016289	4	0.000743	7
Children (7–12 years old)	0.018555	4	0.001047	10
Females (13–50 years old)	0.019273	4	0.001044	10
Males (13–19 years old)	0.014797	3	0.000805	8
Males (20+ years old)	0.015994	4	0.000917	9
Seniors (55+ years old)	0.015981	4	0.000902	9

iii. *Cancer*. Based on the negative carcinogenic potential of fenamidone in rats and mice, the Agency has classified fenamidone as not likely to be carcinogenic in humans by all relevant routes of exposure. Therefore, a cancer dietary analysis is not necessary and has not been conducted.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fenamidone in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or

modeling taking into account data on the physical characteristics of fenamidone.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/ EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to fenamidone they are further discussed in the aggregate risk sections.

Based on the PRZM/EXAM and SCI-GROW models the estimated environmental concentrations (EECs) of fenamidone and its metabolites of concern for acute exposures are estimated to be 49.7 parts per billion (ppb) for surface water and 45.4 ppb for ground water. The EECs for chronic exposures are estimated to be 8.92 ppb for surface water and 45.4 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fenamidone is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether fenamidone has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fenamidone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fenamidone has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. The Agency concluded that there is no concern for pre- and/or postnatal toxicity resulting from exposure to fenamidone. No quantitative or qualitative evidence of increased susceptibility of rat or rabbit fetuses to *in utero* exposure in the developmental toxicity studies was observed. There was no developmental toxicity in rabbit fetuses up to 100 mg/kg/day (HDT), which resulted in an increased absolute liver weight in the does. Since the liver was identified as one of the principal target organs in rodents and dogs, the occurrence of this finding in rabbits at 30 and 100 mg/kg/day was considered strong evidence of maternal toxicity. In the rat developmental study, maternal toxicity in the form of decreased body weight and food consumption occurred at 1,000 mg/kg/day (limit dose). Also at this same dose, developmental toxicity was observed as decreased fetal body weight and incomplete fetal ossification. The developmental and maternal NOAEL was 150 mg/kg/day. The effects at the limit dose were comparable between fetuses and dams. No quantitative or qualitative evidence of increased susceptibility was observed in the 2–generation reproduction study in rats. In that study, both the parental and offspring NOAEL was established at 60 ppm (5.45 mg/kg/day) based on decreased absolute brain weight in female F1 adults and female F2 offspring at 1,000 ppm (89.2 mg/kg/day). At 5,000 ppm (438.3 mg/kg/day), parental effects consisted of decreased body weight and food consumption, and increased liver and spleen weight. Decreased pup body weight was also observed at the same dose level of 438.3 mg/kg/day. There were no effects on reproductive performance up to 438.3 mg/kg/day (HDT).

3. *Conclusion*. Other than a developmental neurotoxicity study, there is a complete toxicity data base for fenamidone and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency has determined that an additional safety factor of 3X is necessary to protect the safety of infants and children in assessing fenamidone exposures and risks based on the following considerations.

There is a concern for developmental neurotoxicity resulting from exposure to fenamidone due to the clinical signs of neurotoxicity in the mutagenicity studies, abnormal gait and other evidence in the acute neurotoxicity study in rats, the decreased absolute brain weight in the subchronic neurotoxicity study in male rats, and the decreased absolute brain weight in the female F1 adults and female F2 offspring in the 2–generation rat reproduction study. The Agency has determined that an uncertainty factor of

3X (as opposed to a higher value) is sufficiently protective because available DNT data demonstrate that a 3–fold factor is generally sufficient to address the uncertainty that results from a missing DNT study when there are concerns for neurological development (A retrospective analysis of twelve development neurotoxicity studies submitted by the USEPA, Office of Prevention, Pesticides, and Toxic Substances, Presented to the Science Advisory Panel (SAP), December 8-9, 1998). In addition, fenamidone is not a cholinesterase inhibitor and, therefore, the comments made at the June 26-27, 2002 Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) SAP meeting on the Determination of the Appropriate FQPA Safety Factor(s) in the Organophosphorous Pesticide Cumulative Risk Assessment: Susceptibility and Sensitivity to the Common Mechanism, Acetylcholinesterase Inhibition should not influence this uncertainty factor decision.

No Special FQPA Safety Factor is necessary because:

i. There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with fenamidone, and there is no evidence of increased susceptibility of young rats in the reproduction study with fenamidone;

ii. There are no residual uncertainties identified in the exposure databases as the dietary food exposure assessment is conservative, since tolerance-level residues and 100% crop treated are assumed; and

iii. The dietary drinking water exposure is based on conservative modeling estimates, and there are no registered or proposed residential uses at this time, so these assessments will not underestimate the exposure and risks posed by fenamidone.

Any concern that the additional 3X factor is not sufficiently protective is more than offset by the conservative nature of the exposure estimate. For the following reasons, the exposure estimate, in all likelihood, has overstated potential residue levels by at least a factor of 10. Specifically, in regards to the Agency's dietary food exposure assessment, the Agency has assumed tolerance level residues and 100% crop treated in conducting its acute risk assessment. In conducting the chronic dietary food exposure assessment, the Agency has assumed average residues based on field trial data and 100% crop treated. In July 2001, the U.S. Department of Agriculture issued a report entitled ''Agricultural Chemical Usage, Vegetable Summary,'' in which the Department determined that no greater than 66 percent of the national lettuce crop is treated with any fungicide. Treatment with any one fungicide is lower than this figure and, in most cases, dramatically so. The assumption of 100% crop treated, therefore, is an overestimate and is, therefore, protective. Both the use of tolerance level residues and the use of average residues from field trial data for use in conducting a chronic dietary risk assessment will lead to substantial overstatement of exposure because:

a. Residue levels decline sharply (by a factor of over 200X) within 1 week of treatment at the minimum pre-harvest interval;

b. The average residue calculations assumed consumption of leaf wrappers from head lettuce; data submitted in support of the use of fenamidone on head lettuce indicate that average residues without wrappers, which are typically discarded prior to consumption, are lower than the values used in this assessment by a factor of 6X; and

c. The assessment does not take into account the residue reduction associated with washing of lettuce prior to consumption; fenamidone is not a systemic fungicide and, therefore, residues are likely to be surface residues only and would be reduced through washing.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to fenamidone will occupy 4% of the aPAD for the U.S. population, 4% of the aPAD for females and 13–50 and 4% of the aPAD for children 7–12 years old. Children are the population with the greatest potential for exposure to fenamidone. In addition, there is potential for acute dietary exposure to fenamidone in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO FENAMIDONE

Population Subgroup	aPAD (mg/kg/day)	Food Exposure (mg/kg/day	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.43	0.017	49.7	45.4	14,000
All infants less than 1 year old	0.43	0.000	49.7	45.4	4,300
Children (1–6 years old)	0.43	0.016	49.7	45.4	4,100
Children (7–12 years old)	0.43	0.019	49.7	45.4	4,100
Females (13–50 years old)	0.43	0.019	49.7	45.4	12,000

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fenamidone from food will utilize 10 % of the cPAD for the U.S. population, <1 % of the cPAD for all infants <1 year old and 10 % of the cPAD for children 7–12 years old. There are no residential uses for fenamidone. In addition, there is potential for chronic dietary exposure to fenamidone in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 5:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON- CANCER) EXPOSURE TO FENAMIDONE

Population Subgroup	cPAD mg/kg/day	Food Exposure	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.01	0.0009	8.9	45.4	320
All infants less than 1 year old	0.01	0.00002	8.9	45.4	100
Children 7 to 12 years old	0.01	0.001	8.9	45.4	90
Females, 13–50 years old	0.01	0.001	8.9	45.4	270

3. *Short-term risk and intermediate-term risk*. Short-term and intermediate-term aggregate exposure take into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fenamidone is not registered for use on any sites that would result in residential exposure. Therefore, short- and intermediate- term risk assessments were not performed.

4. *Aggregate cancer risk for U.S. population*. Fenamidone is not likely to be carcinogenic.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to fenamidone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Livestock tolerances for residue of fenamidone are not currently necessary; therefore, information pertaining to a livestock enforcement method is not relevant to the current petition.

Fenamidone, RPA 408056, RPA 717979 and RPA 405862 were tested through FDA Multiresidue Method of Protocols. Residues of fenamidone and all three metabolites were completely recovered using Protocol D. Low recoveries of fenamidone were observed from Protocols E (31%) and F (54%). Metabolites RPA 408056, RPA 717879, and RPA 405862 were not recovered using Protocols E and F. Protocol B was not tested because fenamidone and its metabolites are not acids or phenols, and Protocol A was not fully tested because the compounds were not found to naturally fluoresce. These data have been forwarded to the FDA for further evaluation. Adequate method validation, radiovalidation, and independent laboratory validation of the petitioner proposed LC/MS/MS enforcement method have been received. The proposed enforcement method has been forwarded to the ACB for petition method validation. The registrant must make any modifications to the proposed enforcement methods that the Agency finds necessary during its validation of the methods. A successful PMV is necessary before this method can be employed as an enforcement method. Upon successful completion of the validation, the method will be forwarded to FDA for publication for future revision of the Pesticide Analytical Manual, Vol-II (Prior to publication and upon request, the method will be available from the Analytical Chemistry Branch (ACB), BEAD (75053). Contact Francis D. Griffith, telephone (410) 305-2905, e-mail:griffith.francis@epa.gov. Analytical standards are also available from the EPA National Repository at the same location.

Adequate enforcement methodology (example—gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

CODEX, Canada, and Mexico do not have maximum residue limits (MRLs) for residues of fenamidone, in/on head lettuce or leaf lettuce.

V. Conclusion

Therefore, the tolerance is established for residues of [4H-Imidazol-4-one, 3,5-

dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino)-, (S)-], fenamidone, in or on head lettuce at 15 ppm and leaf lettuce at 20 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–2002–0229 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 26, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your written request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlinton, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–2002–0229, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section

12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 13, 2002.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.579 is added to read as follows:

§ 180.579 Fenamidone; tolerances for residues.

(a) *General.* Tolerances are established for residues of fenamidone (4H-Imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3 (phenylamino)-, (S)-) from the application of the fungicide fenamidone on the following raw agricultural commodities:

Commodity	Parts per million
Lettuce, head	15 ppm
Lettuce, leaf	20 ppm

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 02–24652 Filed 9–26–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0193; FRL–7199–8]

Cyfluthrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of cyfluthrin in or on soybean, seed; soybean, forage; soybean, hay; corn, field, forage; corn, field, stover and corn, pop, stover; grain, cereal, group; corn, field, refined oil; corn, field, milled byproduct; grain, aspirated fractions; wheat milled byproducts, except flour; rice, hulls; rice, bran; barley, bran, oat, bran and rye, bran; milk; milk, fat; cattle, fat, goat, fat, hog, fat, horse, fat and sheep, fat; mustard greens; lettuce, leaf; lettuce, head; brassica, head and stem, subgroup; pea, southern, succulent; and pea, dry. Bayer Corporation and the Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective September 27, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0193, must be received on or before November 26, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0193 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: stanton.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0193. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 20, 1998 (63 FR 64484–64489) (FRL–6030–9); March 1, 2000 (65 FR 11052–11057) (FRL–6489–9); and April 4, 2001 (66 FR 17887–17891) (FRL–6772–5), EPA issued notices pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP 8F5023, 5F4475, and 0F6084) by Bayer Corporation, and (PP 0E6184 and PP 0E6075) by the IR–4. These notices included summaries of the petitions prepared by Bayer Corporation, the registrant. There were no comments received in response to the notice of filings.

These petitions requested that 40 CFR 180.436 be amended by establishing tolerances for residues of the insecticide cyfluthrin, cyano (4-fluoro-3-phenoxyphenyl) methyl-3-(2,2-didichloroethenyl)-2,2-dimethyl-cyclopropane-carboxylate, as follows:

1. PP 8F5023 proposed establishment of tolerances for soybean, bean at 0.03 ppm; soybean, forage at 8.0 ppm; soybean, hay at 4.0 ppm; field corn forage at 3.0 ppm; and field corn, fodder at 6.0 ppm.

2. PP 5F4475 proposed establishment of tolerances for cereal grains group; corn, starch; corn, refined oil (wet milling); corn, flour; corn, refined oil (dry milling); wheat, bran; corn, milled byproducts; rice, hulls; and wheat, milled by-products at 2.0, 3.0, 12, 4.0, 15, 3.0, 4.0, 9.0, and 3.0 ppm, respectively.

3. PP 0F6084 proposed establishment of tolerances for mustard greens, greens; lettuce, head; lettuce, leaf; and head and stem brassica subgroup (5A) at 7.0, 2.0, 3.0, and 2.0 ppm, respectively.

4. PP 0E6184 proposed establishment of a tolerance for southern pea at 0.23 ppm.

5. PP 0E6075 proposed establishment of a tolerance for dry peas (pigeon peas, chickpeas/garbanzo beans, lentils) at 0.05 ppm.

In the **Federal Register** of May 24, 2002 (67 FR 36596–36598) (FRL–7178–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the amended filing of PP 0F6084 by Bayer Corporation. The amended petition requested that the proposed tolerance for the head and stem brassica subgroup (5A) be increased from 2.0 ppm to 2.5 ppm. There were no changes in the proposed tolerances for mustard greens, greens; lettuce, head; or lettuce, leaf. There were no comments received in response to the amended notice of filing.

Based on EPA's review, the petitions described in Unit II. were revised by the petitioners (Bayer Corporation and IR-4) to propose tolerances for residues of cyfluthrin in or on soybean, seed at 0.03 ppm; soybean, forage at 8.0 ppm; soybean, hay at 4.0 ppm; corn, field, forage at 3.0 ppm; corn, field, stover and corn, pop, stover at 6.0 ppm; grain, cereal, group at 4.0 ppm; corn, field, refined oil at 30 ppm; corn, field, milled byproduct at 7.0 ppm; grain, aspirated fractions at 600 ppm; wheat milled byproducts, except flour at 5.0 ppm; rice, hulls at 18 ppm; rice, bran at 6.0 ppm; barley, bran, oat, bran and rye, bran at 5.0 ppm; milk at 1.0 ppm; milk, fat at 30 ppm; cattle, fat, goat, fat, hog, fat, horse, fat and sheep, fat at 10 ppm; mustard greens at 7.0 ppm; lettuce, leaf at 3.0 ppm; lettuce, head at 2.0 ppm; brassica, head and stem, subgroup at 2.5 ppm; pea, southern, succulent at 0.25 ppm; and pea, dry at 0.15 ppm.

Although EPA requested a number of changes to the initial petitions, the nature of the changes (i.e., clarification and correction of commodity terms and changes in tolerance levels) are not considered significant. Therefore, EPA is issuing this as a final action.

EPA is also revising or deleting existing tolerances for cyfluthrin that are superseded or no longer needed, correcting administrative errors in existing tolerances, and updating tolerance terminology as follows:

1. Tolerances for residues of cyfluthrin in or on corn, forage and fodder, field and pop at 0.01 ppm; corn, grain, field and pop at 0.01 ppm; aspirated grain fractions at 300 ppm; milkfat (reflecting 0.5 ppm in whole milk) at 15.0 ppm; sorghum, grain at 4.0 ppm; and fat of cattle, goats, hogs,

horses, and sheep at 5.0 ppm are being revised or replaced as appropriate to reflect the new commodity terms and tolerance levels specified in Unit II.

2. Time-limited tolerances established for residues of cyfluthrin in or on barley, oat and wheat grain at 2.0 ppm and fat of cattle, goat, hog, horse, and sheep at 6.0 ppm in connection with section 18 emergency exemptions granted by EPA are no longer needed and are being deleted.

3. Administrative errors in existing tolerances for radishes, sweet corn forage and sweet corn fodder are being corrected as follows: The existing tolerance for residues of cyfluthrin in or on radishes at 1.0 ppm is being revised to specify the commoditiy as ''radish, roots.'' The existing tolerances for corn, sweet, fodder at 15 ppm and corn, sweet, forage at 30 ppm were inadvertantly reversed. They are being corrected and the commodity terminology is being updated to read ''corn, sweet, stover'' at 30 ppm and ''corn, sweet, forage'' at 15 ppm.

4. Commodity terms for existing tolerances are being updated to conform to the current Food and Feed Commodity Vocabulary. The Vocabulary data base is available on the EPA internet site at the following address: http://www.epa.gov/pesticides/foodfeed/

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of cyfluthrin on soybean, seed at 0.03 ppm; soybean, forage at 8.0 ppm; soybean, hay at 4.0 ppm; corn, field, forage at 3.0 ppm; corn, field, stover and corn, pop, stover at 6.0 ppm; grain, cereal, group at 4.0 ppm; corn, field, refined oil at 30 ppm; corn, field, milled byproduct at 7.0 ppm; grain, aspirated fractions at 600 ppm; wheat milled byproducts, except flour at 5.0 ppm; rice, hulls at 18 ppm; rice, bran at 6.0 ppm; barley, bran, oat, bran and rye, bran at 5.0 ppm; milk at 1.0 ppm; milk, fat at 30 ppm; cattle, fat, goat, fat, hog, fat, horse, fat and sheep, fat at 10 ppm; mustard greens at 7.0 ppm; lettuce, leaf at 3.0 ppm; lettuce, head at 2.0 ppm; brassica, head and stem, subgroup at 2.5 ppm; pea, southern, succulent at 0.25 ppm; and pea, dry at 0.15 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cyfluthrin and its enriched isomer, beta-cyfluthrin are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

Beta-cyfluthrin is an enriched isomer of cyfluthrin. Bridging data on beta-cyfluthrin were submitted so that the toxicity of beta-cyfluthrin could be compared with that of cyfluthrin and the data bases could be combined to form one complete data base for both chemicals.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results (NOAEL/LOAEL in milligram/kilogram/day (mg/kg/day))
870.3100	90–Day oral toxicity—rats Beta-cyfluthrin (99.7% active ingredient (a.i.))	NOAEL = 9.5/10.9 male/female (M/F) LOAEL = 37.0/43.0 (M/F) based on gait abnormalities, necrosis in head and neck region, mortality (2), decreased body weight gain.
870.3100	90–Day oral toxicity—rats Cyfluthrin (84.2% a.i.)	NOAEL ≥ 22.3/28.0 for males and females LOAEL not established
870.3150	90–Day oral toxicity—dogs Beta-cyfluthrin (99% a.i.)	LOAEL = 13.9/15.4 (M/F) based on gait abnormalities (both sexes), vomiting (both sexes) and suggestive decrease in body weight gain
870.3200	21/28–Day dermal toxicity—rats Cyfluthrin (95.5%)	Dermal NOAEL = 113 Systemic NOAEL = 376 Dermal LOAEL = 376 based on gross and histological skin lesions. Systemic LOAEL = 1077 based on decreased food consumption, red nasal discharge and urine staining.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results (NOAEL/LOAEL in milligram/kilogram/day (mg/kg/day))
Non-guideline	28–Day oral toxicity Cyfluthrin	NOAEL = 15.0 (males & females) based on minimal decrease in blood glucose. LOAEL = 50 based on, gait abnormalities, salivation, nervousness, decrease in body weight, food consumption, changes in hematological, clinical chem. & urinalysis parameters, increases in selected organ wts., cytoplasmic swelling of glandular epithelium of submaxillary gland, minimal degrees of fiber degeneration in sciatic nerve (# not reported) which disappeared after recovery period.
870.3465	90–Day inhalation toxicity study—rats Cyfluthrin (94.9% a.i.)	NOAEL = 0.00009 mg/liter (L) (0.02 mg/kg/day; both sexes) LOAEL = 0.00071 mg/L (0.16 mg/kg/day) based on decreased body weights and body weight gains in males and clinical signs in females
Non-guideline	4–Week inhalation toxicity study—rats Cyfluthrin (93.8% a.i.)	NOAEL = 0.00044 mg/L (0.12 mg/kg/day; males & females) LOAEL = 0.006 mg/L (1.6 mg/kg/day; males & females) based on decreases in body weight and body weight gain in males, hypothermia, reduction in leukocyte counts (F) and low serum protein.
Non-guideline	4–Week subacute inhalation study—rat Beta-cyfluthrin (97.9% a.i.)	NOAEL = 0.00026 mg/L (0.07 mg/kg/day) LOAEL = 0.0027 mg/L (0.73 mg/kg/day) based on decreased body weights, 9 urine pH in males
Non-guideline	5–Day range-finding inhalation study—rat Beta-cyfluthrin (98% a.i.)	NOAEL = 0.00025 mg/L (0.07 mg/kg/day) LOAEL = 0.0038 mg/L (1.03 mg/kg/day) based on unpreened hair coat, piloerection, hepatoid foci in lungs.
Non-guideline	28–Day dog feeding study Beta-cyfluthrin	NOAEL = 2.0 (both sexes) LOAEL = 8.0 based on impaired movement and conjunctival irritation.
870.3700	Prenatal developmental toxicity study—rats Beta-cyfluthrin (96.5–97.3%)	Maternal NOAEL = 3 Developmental NOAEL = 10 Maternal LOAEL = 10 based on reduced body weight gain and reduced food consumption with post-treatment recovery. Developmental LOAEL = 40 based on reduced fetal body weights and increased skeletal variations.
870.3700	Prenatal developmental toxicity study—rats Cyfluthrin (93.4%)	Maternal NOAEL > 10 mg/kg/day Maternal LOAEL not established Developmental NOAEL > 10 mg/kg/day developmental LOAEL not established
870.3700	Prenatal developmental toxicity—rabbits Cyfluthrin (96% a.i.)	Maternal NOAEL = 20.0 Developmental NOAEL = 180.0 Maternal LOAEL = 60.0 based on decreased body weight gain and food consumption during the dosing period Developmental LOAEL > 180 mg/kg/day
870.3700	Prenatal developmental toxicity via inhalation–rat Cyfluthrin (96.2%)	Maternal NOAEL <0.00046 mg/L (< 0.125 mg/kg/day) Developmental NOAEL = 0.00046 mg/L (0.125 mg/kg/day) Maternal LOAEL = 0.00046 mg/L (0.125 mg/kg/day) based on decreased body weight gain and relative food efficiency Developmental LOAEL = 0.00255 mg/L (0.692 mg/kg/day) based on reduced fetal and placental weights and reduced ossification in phalanx, metacarpals, vertebrae
870.3700	Prenatal developmental toxicity via inhalation—rat Cyfluthrin (92.9% and 93%) 2 studies combined	Combined maternal NOAEL = 0.0011 mg/L (0.299 mg/kg/day Developmental NOAEL = 0.00059 mg/L (0.160 mg/kg/day) Combined maternal LOAEL= 0.0047 mg/L (1.277 mg/kg/day) based on reduced motility, dyspnea, piloerection, ungroomed coats, eye irritation Developmental LOAEL = 0.0011 mg/L (0.299 mg/kg/day) based on increased incidence of runts and skeletal anomalies in sternum.
Non-guideline	7–Day postnatal inhalation study (both pups & dams) in mice with spontaneous motor activity measurements Cyfluthrin (96.8%)	Maternal NOAEL = 0.058 mg/L (24.0 mg/kg/day; highest dose tested (HDT) Offspring NOAEL = 0.006 mg/L (2.48 mg/kg/day) Maternal LOAEL > 0.058 mg/L (> 24.0 mg/kg/day) Offspring LOAEL = 0.015 mg/L (6.21 mg/kg/day) based on clinical signs of toxicity and spontaneous motor activity observed in females 4 months after exposure.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results (NOAEL/LOAEL in milligram/kilogram/day (mg/kg/day))
870.3800	Reproduction and fertility effects study—rat (dietary) Cyfluthrin (95.4% a.i.)	Parental NOAEL = Parental: 3/4 (M/F) Offspring NOAEL = 7 (M/F) Parental LOAEL = 9/10 (M/F) based on reductions in body weights and food consumption. Offspring LOAEL = 19 based on coarse tremors in pups during lactation and decreases in mean litter weight .
Non-guideline	''Supplemental'' 2–generation reproduction study—rat (1997) Cyfluthrin (95.5% a.i.)	Systemic parental NOAEL = 3.8/4.2 Systemic offspring NOAEL = 3.8/4.2 (Male/Female) Systemic parental LOAEL > 3.8/4.2 Systemic offspring LOAEL > 3.8/4.2 (Male/Female)
Non-guideline	Pilot 1–generation reproduction study—rat Cyfluthrin (95.7–96.2% a.i.)	Parental systemic NOAEL = 22.9 Offspring systemic NOAEL = 7.8 Parental systemic LOAEL = 59.6 based on hind leg splay, ataxia, reduction in body weight gain. Pup systemic LOAEL = 22.9 based on tremors during lactation and pup weight decreases.
Non-guideline	Multigeneration reproduction study—rats Cyfluthrin	Parental NOAEL = 12.3/15.1 Offspring NOAEL = 5.4 Parental LOAEL = 37.2/48.5 based on decreased body weight gain. Offspring LOAEL = 15.1 based on decreased viability during lactation period and decreased body weight gains
870.4100	Chronic toxicity—feeding study—dog Cyfluthrin (94.9–95.1% a.i.)	NOAEL = 2.43/3.61 (M/F) LOAEL = 10.64/10.74 (M/F) based on clinical signs, gait abnormalities, and abnormal postural reactions in males and females.
870.4100	Chronic toxicity—feeding study—dog Cyfluthrin 50%	NOAEL = 4.0 (males & females) LOAEL = 16.0 (males & females) based on gait abnormalities, vomiting, liquid feces, decreased body weights (males).
870.4100	Chronic toxicity—6–month dog feeding study Cyfluthrin	NOAEL = 5.0 (males & females) LOAEL = 15.0 (males & females). Gait abnormalities, arching backs, vomiting, diarrhea.
870.4200	Carcinogenicity feeding study—mice Cyfluthrin (93.9% a.i.)	NOAEL = 31.9 (males) and 140.6 (females) LOAEL = 114.8 (males) based on ear skin lesions and reduced body weight gains. 309.7 (females) based on clinical signs; macroscopic and microscopic pathology findings; and reduced body weights, body weight gains, and food consumption. Under the conditions of this study, there was no evidence of carcinogenic potential.
870.4200	Carcinogenicity feeding study—mice Cyfluthrin (49.7–51.0% a.i.)	No evidence of carcinogenic potentialstudy not acceptable for chronic toxicity
870.4300	Combined chronic toxicity/carcinogenicity feeding study—rat Cyfluthrin (94.7% a.i.)	NOAEL = 2.6 (males), 3.3 (females) LOAEL = 11.6 (males), 14.4 (females) based on overall declines in body weight gain by 12 and 10% in males and females, respectively. No carcinogenic effects.
870.4300	Combined chronic toxicity/carcinogenicity feeding study—rat Cyfluthrin (49.7–51.0%)	NOAEL = 6.19 (males), 8.15 (females) LOAEL = 19.20 (M), 25.47 (F) based on decreased body weights and body weight gains. No carcinogenic effects.
870.5100	Gene mutation—bacterial reverse mutation assay with cyfluthrin	No increases in reverse mutations with and without activation
870.5100	Gene mutation—yeast reverse mutation assay with cyfluthrin	No increase in number of revertants with S138 cultures increase in number of revertants with S211 culture but not dose-related; no increase in number of revertants when assay repeated
870.5100 870.5500	Gene mutation—bacterial reverse mutation assay with cyfluthrin Bacterial DNA damage with cyfluthrin	In rec-assay, no inhibition at doses of 100–10,000 μg/disk in reverse mutation assay, no increase in number of revertant colonies, with and without activation

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results (NOAEL/LOAEL in milligram/kilogram/day (mg/kg/day))
870.5300	*In vitro* mammalian cell gene mutation with cyfluthrin	Cyfluthrin did not induce forward mutations under conditions of assay
870.5575	*Saccharomyces cerevisiae* mitotic gene conversion with cyfluthrin	Not mutagenic under conditions of assay
870.5550	Unscheduled DNA Synthesis (UDS) in rat hepatocytes with cyfluthrin	No increase in UDS
870.5915	Sister Chromatid Exchange (SCE) in Chinese Hamster Ovary (CHO) cells with cyfluthrin	No increase in SCE frequency in treated cells
870.5550	DNA damage and repair in *E. coli* with cyfluthrin	No induction of inhibition, both with and without activation
870.5100	Gene mutation—bacterial reverse mutation assay with beta-cyfluthrin	No increases in reverse mutations in *S. typhimurium* strains TA 1535, TA 1537, TA 98, or TA 100 with and without activation
87.5300	*In vitro* mammalian cell gene mutation test with beta-cyfluthrin	No mutagenic response in CHO cells hypoxanthine guanine phophoribosyl transferase (HGPRT) assay with and without activation
870.5395	Mammlian erythrocyte micronucleus test with beta-cyfluthrin	No increased frequency of micronucleated polychromatic erythrocytes in mice bone marrow cells
870.5375	*In vitro* mammalian chromosome aberration test with beta-cyfluthrin	Not clastogenic in human lymphocytes
870.5550	UDS in mammalian cells in culture with beta-cyfluthrin	No evidence of UDS in rat hepatocytes
870.6100	Neurotoxic esterase (NTE)—hen Cyfluthrin	All hens died within 3 days; NTE activity was not inhibited
870.6100	Neurotoxicity oral studies—hen Cyfluthrin	In the single-dose study, at 5,000 mg/kg, five of the ten hens died. Moderate fiber alterations (axon fragmentation, occasional swelling and eosinophilia of the axon fragments and vacuolation of the myelin sheaths) in the sciatic nerve were observed in two hens. Six hens at 2,500 mg/kg showed signs of excitation during the first 3 days following treatment. In the two-dose study, hens showed initial signs of intoxication during the first 3 days but were normal until the second dose was administered when four hens died. Symptoms following the second treatment subsided; however, a second set of symptoms developed in 4/30 hens. These symptoms resembled delayed type neurotoxicity. Nerve fiber degeneration was present in the majority of the hens. The myelin sheath was distended and the myelin sheath was described as being optically void or granularly disintegrated. The axons were described as swollen or fragmented and in some areas activated or proliferated Schwann's cells were noted. The nerves also contained macrophages in which cytoplasm contained granular material. In the 5–day study, 4/10 hens died. All hens showed initial toxic responses which eventually disappeared. Behavioral disorders accompanied by drowsiness and a cramped gait were observed in 3 of the 6 survivors. Mottled kidneys and brittle livers were noted at necropsy. Treatment-related fiber degeneration (distension or granular disintigration of the medullary sheath, swollen or fragmented axis cylinders and proliferated Schwann's cell in the sciatic nerve were reported. One hen had similar lesions in the spinal marrow.
870.6100	Neurotoxicity oral studies—hen Cyfluthrin	In the single-dose study, the hens showed an initial weight loss but recovered. No other treatment-related effects were observed. In the two-dose study, one hen showed some signs of neurotoxicity on day 30. There were no microscopic lesions in the nervous system.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results (NOAEL/LOAEL in milligram/kilogram/day (mg/kg/day))
870.6100	Neurotoxicity dermal studies—hen Cyfluthrin	In the first study there were 2 deaths on the 3rd and 10th day. All other hens had symptoms (apathy and disturbed behavior) but recovered. Local irritation and weight loss were also noted. Two hens had minimal segment-like nerve fiber degeneration (sciatic nerve), but this type is often found in hens. In the second study, the hens were apathetic. These symptoms disappeared after the first week in all hens except 2, in which they persisted until the 38th and 51st day after the start of the treatment, respectively. Local irritation and body weight loss were also observed. No other neurologic effects were observed, including microscopic.
870.6100	Acute delayed neurotoxicity—hen Cyfluthrin	Nine of 10 hens died at 0.596 mg/L and none died in any of the lower concentrations. These had some nonspecific symptoms (behavior disturbances, sedation, eye irritancy), which disappeared after 2 days. Some initial weight loss was also noted. In the 3–week study, one hen died. Nonspecific symptoms were again observed. Nothing remarkable was noted at necropsy.
870.6100	Acute delayed neurotoxicity and NTE—hen Cyfluthrin	4,300, 1,500: Mortality, aggression, somnolence, cyanosis of crest. Sl. axonal degenration of sciatic nerve in one hen given a single dose; sl. axonal degeneration of spinal cord in one hen given two doses. No treatment-related changes in NTE activity.
870.6200	Acute oral neurotoxicity [gavage]—rat Beta cyfluthrin (≥96.9% a.i.)	NOAEL = 2 LOAEL = 10 based on clinical signs, changes in functional observational battery (FOB) parameters and decreases in motor activity.
870.6200	Subchronic oral neurotoxicity [feeding]—rat Beta-cyfluthrin (≥96.5% a.i.)	NOAEL = 7.99 (males) 9.40 (females) LOAEL = 26.81 (males) 30.83 (females) based on clinical signs, changes in FOB measurements and possibly decreased body weights, body weight gains, and food consumption
870.7485	Metabolism and pharmacokinetics Cyfluthrin (98%)	Following oral administration, the test material was rapidly and nearly completely absorbed. Greater than 95% of the administered radioactivity was excreted within 48 hours. Radioactivity was excreted in the urine and feces with virtually none being excreted in expired air. By 48 hours after dosing, >98% of the total retrieved radioactivity was recovered in the urine and feces. The ratio of radioactivity in urine/feces was higher in males than in females. About 50% of the total urinary radioactivity was recovered during the first 6–8 hours after dosing and about 90% within the first 24 hours. At 48 hours, only the fat tissue (renal fat) contained levels of radioactivity that clearly exceeded the overall mean body level, being 6–11X higher. Levels of radioactivity in brain were quite low, being 15–20X lower than the overall mean body level. Different dose levels (0.5 or 10 mg/kg) or pretreatment (14X) did not appreciably affect the above findings. Some sex differences, however, were observed as indicated by higher urine/feces ratios in males and slightly higher organ/tissue levels of redioactivity in females (except for fat tissue). Following intravenous administration, a 2 phase plasma elimination pattern was observed with plasma half-lives of about 2.1 and 20 hours. Greater than 90% of the administered radioactivity was excreted within 48 hours. By 48 hours after dosing, about 93–94% of the total retrieved radioactivity was recovered in the urine and feces. Residual levels of radioactivity in the body and in individual organs/tissues were higher than after oral administraiton. In other respects, the results following intravenous dosing were quite similar to those described for oral dosing. Studies in male rats with bile fistulas indicated an enterhepatic circulation of test material.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results (NOAEL/LOAEL in milligram/kilogram/day (mg/kg/day))
870.7485	Metabolism and pharmacokinetics Cyfluthrin (98%)	Excretion of radioactivity was rapid. Following oral administration, >95% of the administered radioactivity was excreted within 48 hours, and following intravenous injection, >90% within 48 hours. Most of the radioactivity was excreted in urine, the urine/fecal ratio being about 2–3X in males and about 1.6–1.8X in females following oral administration and about 2.5X in males and about 2.6X in females following intravenous injection. Parent cyfluthrin is cleaved at the ester bond and then oxidized to yield 3-phenoxy-4-fluorobenzoic acid. This intermediate is then either hydroxylated and subsequently conjugated and excreted or first bound to glycine and then hydroxylated, conjugated, and excreted. Identified metabolites and parent cyfluthrin (in urine, feces, and body) accounted for 65–73% of the recovered radioactivity after a single oral or intravenous dose of 0.5 mg/kg and about 82–83% of the recovered radioactivity after a single-oral dose of 10 mg/kg or after 14 daily-oral doses.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for Cyfluthrin used for human risk assessment is shown in Table 2 of this unit. The toxicology data bases for cyfluthrin and its enriched isomer, beta-cyfluthrin, were considered together in selecting endpoints for risk assessment.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CYFLUTHRIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure scenario	Dose used in risk assessment, UF	FQPA SF* and level of concern for risk assessment	Study and toxicological effects
Acute Dietary general population including infants and children	NOAEL = 2.0 mg/kg/day UF = 100 Acute RfD = 0.02 mg/kg/day	FQPA SF = 1 aPAD = acute RfD/FQPA SF = 0.02 mg/kg/day	Acute mammalian neurotoxicity (beta-cyfluthrin) LOAEL = 10 mg/kg/day based on clinical signs, changes in FOB parameters and decreases in motor activity.
Chronic Dietary all populations	NOAEL = 2.4 mg/kg/day UF = 100 Chronic RfD = 0.024 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD/FQPA SF = 0.024 mg/kg/day	53–Week chronic toxicity—feeding—dog (cyfluthrin) LOAEL = 10.64 mg/kg/day based on clinical signs, gait abnormalities, and abnormal postural reactions.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CYFLUTHRIN FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure scenario	Dose used in risk assessment, UF	FQPA SF* and level of concern for risk assessment	Study and toxicological effects
Incidental Oral Short- and Intermediate-Term (Residential)	NOAEL = 2.36/2.5 mg/kg/day	LOC for MOE = 100 (Residential)	90–Day dog feeding study (beta-cyfluthrin) LOAEL = 13.9/15.4 mg/kg/day for males/females, based on gait abnormalities, increased incidence of vomiting, and suggestive decreased body weight gain.
Short-Term Dermal (1 to 30 days); and Intermediate-Term Dermal (1 to 6 months) (Residential)	Oral study NOAEL = 2.36/2.5 mg/kg/day (dermal absorption rate = 5%)	LOC for MOE = 100 (Residential)	90–Day dog feeding study (beta-cyfluthrin) LOAEL = 13.9/15.4 mg/kg/day for males/females, based on gait abnormalities, increased incidence of vomiting, and suggestive decreased body weight gain.
Long-Term Dermal (several months to lifetime) (Residential)	Oral study NOAEL = 2.4 mg/kg/day (dermal absorption rate = 5%when appropriate)	LOC for MOE = 100 (Residential)	53–Week chronic toxicity—feeding—dog (cyfluthrin) LOAEL = 10.64 mg/kg/day based on clinical signs, gait abnormalities, and abnormal postural reactions.
Short-Term Inhalation (1 to 30 days) (Residential)	Inhalation study NOAEL = 0.07 mg/kg/day	LOC for MOE = 100 (Residential)	28–Day inhalation study—rat (beta-cyfluthrin) LOAEL = 0.73 mg/kg/day based on decreases in body weight in both sexes and decreased urinary pH in males.
Intermediate-Term Inhalation (1 to 6 months); and Long-Term Inhalation (several months to lifetime) (Residential)	Inhalation study NOAEL = 0.02 mg/kg/day	LOC for MOE = 100 (Residential)	13–Week inhalation study—rat (cyfluthrin) LOAEL = 0.16 mg/kg/day based on decreases in body weight and body weight gain in males and clinical signs in females
Cancer (oral, dermal, inhalation)	N/A		Cyfluthrin is classified as ''not likely to be carcinogenic in humans''

* The reference to the FQPA Safety Factor (SF) refers to any additional SF retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.180.436) for the residues of cyfluthrin, in or on a variety of raw agricultural commodities. Tolerances have been established on plant commodities ranging from 0.01 ppm for corn grain and potatoes to 300 ppm for aspirated grain fractions and on animal commodities ranging from 0.01 ppm for poultry commodities to 15 ppm for milk fat, and a tolerance of 0.05 ppm has been established in food or feed commodities exposed to the insecticide during treatment of food-handling or feed-handling establishments where food and food products, or feed and feed products, are held, processed, prepared, or served. Risk assessments were conducted by EPA to assess dietary exposures from cyfluthrin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture (USDA) 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A refined acute probabilistic assessment was conducted using anticipated residues from field trials and percent of crop treated (%CT) and market share information. For existing uses, the acute assessments are moderately refined based on field trial residues and estimated %CT information. For new uses, tolerance level residues and 100 %CT were assumed for dried peas and soybeans, but field trial residues and market share information were used to estimate cyfluthrin residues in brassica, lettuce, mustard greens, and certain stored grains.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: For existing uses, the chronic assessments are moderately refined based on field trial residues and estimated %CT information. For

proposed uses, tolerance level residues and 100 %CT were assumed with the exception of stored grains for which there are existing time-limited tolerances; for these grains, %CT estimates and market share information were used.

iii. *Cancer*. Cyfluthrin has been classified as ''not likely to be carcinogenic in humans'' based on the results of a carcinogenicity study in mice and the combined chronic toxicity and carcinogenicity study in rats. Therefore, a dietary exposure assessment was not conducted.

iv. *Anticipated residue and %CT information*. Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of %CT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on %CT.

The Agency used %CT information as follows.

For existing uses, the Agency used estimates of %CT for the acute and chronic exposure assessments which were determined using Doanes Market Survey Data (1996–2000). The following chronic and acute %CT estimates were used for existing registrations: Carrot (3.9 chronic; 8.0 acute); citrus—orange (5.4 chronic; 11.0 acute); citrus—lemon (3.3 chronic; 7.0 acute); citrus—grapefruit (1.2 chronic; 2.5 acute); corn, field and pop, grain (3.0 chronic; 6.0 acute); corn, sweet (2.1 chronic; 3.5 acute); cottonseed (9.3 chronic; 19 acute); peppers (20.0 chronic; 40.0 acute); potatoes (8.0 chronic; 16.0 acute); radishes (1.0 chronic; 2.0 acute); sugarcane (2.5 chronic; 5.0 acute); sunflowers (0.8 chronic; 2.0 acute); tomatoes (4.0 chronic; 9.0 acute); food handling establishments (13.7 chronic; N/A acute).

The Agency believes that the three conditions listed in Unit III.C.1.iv. have been met. With respect to Condition 1, %CT estimates are derived from market survey data, which are reliable and have a valid basis. EPA uses an average %CT for chronic dietary exposure estimates. An average of the %CT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average %CT over a lifetime. For acute assessments, the Agency incorporates %CT information by creating a residue distribution file which includes the measured residue values from field trials, and zero residue values added to account for the percent of crop not treated. This approach is used only for non-blended or partially blended commodities as defined under EPA SOP99.6. For blended commodities, a single-point estimate is created from the residue value multiplied by the upper bound %CT. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation.

For the new uses, the Agency used %CT estimates for the acute exposure assessment based on market share projections as follows: Stored grain—wheat, oats, barley (9.0 %); stored grain, sorghum (3.7 %); mustard greens (9.0 %); lettuce, leaf (19.0 %); lettuce, head (19.0 %); broccoli (14.0 %); brussels sprouts (9.0 %); cabbage (9.0 %); and cauliflower (16.0 %).

The following methods were used to estimate market share for the new uses: For cole crops and leafy vegetables, the year 2000 base acres treated with all pyrethroids/pyrethrins were used along with the assumption of up to 25% market share within 3 years of market entry. For stored cereal grains, the market share estimate for cyfluthrin was based on usage data for chlorpyrifos-methyl.

The Agency believes that the three conditions previously discussed have been met regarding %CT estimates for the new cyfluthrin registrations. With respect to Condition 1, EPA finds that the %CT information described in Unit II.C.1.iv. for cyfluthrin on cole crops, leafy vegetables, and stored cereal grains is reliable and has a valid basis. For cole crops, leafy vegetables, dry peas, and soybeans, the %CT estimates are based on usage data for all pyrethroids/pyrethrins and the generous assumption that cyfluthrin will gain 25% of the total market within 3 years. For stored grains, the estimate is derived from usage data for chlorpyrifos-methyl, historically the most widely used insecticide for control of insect pests in stored grains. These estimates should not underestimate actual usage of cyfluthrin on the new crops/sites. To further support the reliability of these %CT estimates, as a condition of registration, the registrant will be required to agree to report annually on the market share attained for the new uses for which cyfluthrin is registered. As a condition of registration, they will also be required to agree to mitigate dietary risk as deemed appropriate by the Agency should the market share data raise a concern for increased dietary risk. The Agency will then compare that market share information with the %CT estimates used to evaluate potential dietary risk. In those instances where percent market share is approaching or exceeding the predicted %CT estimate used in the Agency's risk assessment, EPA will conduct a new dietary risk assessment to evaluate the new dietary risk. If the market share data raise a concern for increased pesticide risk, the Agency will act to mitigate that dietary risk and could employ several approaches, including but not limited to production caps, geographical limitations, removal of uses, or other means deemed appropriate by the Agency. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those

estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which cyfluthrin may be applied in a particular area.

2. *Dietary exposure from drinking water*. Cyfluthrin has low mobility and moderate persistence and will remain sorbed to the soil for weeks following a treatment. The low mobility indicates that groundwater contamination with the insecticide is highly unlikely. However, under runoff conditions cyfluthrin is likely to reach surface water resources bound to soil particles. Once in the water system, cyfluthrin tends to partition to sediments.

The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for cyfluthrin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of cyfluthrin.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to cyfluthrin they are further discussed in the aggregate risk sections in Unit III.E.

Based on the PRZM/EXAMS and SCI-GROW models the EECs of cyfluthrin for acute exposures are estimated to be 1.2 parts per billion (ppb) for surface water and 0.006 ppb for ground water. The EECs for chronic exposures are estimated to be 1.2 ppb for surface water and 0.006 ppb for ground water. The EECs for cyfluthrin are based on the simulated aerial application of the insecticide on Mississippi cotton at a total annual use rate of 0.50 lbs ai/acre (0.050 lbs a.i./acre) applied 10 times per year.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Cyfluthrin is currently registered for use on the following residential non-dietary sites: Ornamental gardens, lawns, turf, and general insect control in, around and on buildings, structures, and immediate surroundings. There are also uses for spot treatments and crack and crevice treatments for insects in, on, and around homes, buildings, and other structures and for subsoil treatment around structures for control of termites (termiticide use). The risk assessment was conducted using the following residential exposure assumptions: Residential MOEs were assessed for indoor (carpet treatment) and outdoor (lawn) uses of cyfluthrin, including application and post-application exposure. The assessments were based on the conservative assumption that lawn and carpet treatments would occur on the same day. The residential exposure assessment for adults included estimates of exposure via the inhalation and dermal routes; the assessment for infants and children included estimates of exposure via the inhalation, dermal, and oral (hand-to-mouth) routes. Residential applicator exposure from the indoor total release fogger use was not assessed, because homeowner exposure from outdoor lawn treatments is considered to represent the worst-case exposure scenario.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether cyfluthrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyfluthrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cyfluthrin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional 10-fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There was no evidence of increased susceptibility of rats or rabbits to *in utero* exposure in developmental oral studies; however, there was some indication of increased susceptibility in developmental inhalation studies. The data also demonstrated increased

susceptibility of rats and mice to postnatal exposure to cyfluthrin.

3. *Conclusion*. The scientific quality of the toxicity data base for cyfluthrin and beta-cyfluthrin is relatively high, and the toxicity profiles of both cyfluthrin and beta-cyfluthrin can be characterized for all effects, including potential developmental, reproductive and neurotoxic effects. A developmental neurotoxicity (DNT) study is required based on evidence of neurotoxicity seen throughout the toxicology data bases with cyfluthrin and beta-cyfluthrin. Nevertheless, the toxicology data bases together are considered adequate for selecting toxicity endpoints for risk assessment. Cyfluthrin toxicity data have been used as bridging data for beta-cyfluthrin.

The degree of concern for the effects observed in the inhalation developmental studies was considered low, noting that a clear NOAEL was established for the fetal effects in every case. No residual uncertainties were identified. The NOAEL used for short-term inhalation exposure scenarios is protective of the effects seen in the developmental studies via the inhalation route. The degree of concern for the effects observed in the reproductive studies was considered low, noting that a clear NOAEL was established for the offspring effects in every case. No residual uncertainties were identified. The NOAEL used to establish the cRfD for all populations is protective of the effects seen in the young in the reproduction studies.

Preliminary results from the required DNT study on beta-cyfluthrin corroborate these findings. The data indicate a similar NOAEL for parents and pups, based on decreases in body weight. Furthermore, the preliminary NOAEL is comparable to the NOAELS used as the basis for the aRfDs and cRfDs. This information supports the dose analysis conducted by EPA as well as the removal of the special FQPA SF required for the protection of infants and children. Therefore, the FQPA SF (as discussed in the February 2002, OPP 10X guidance document) was reduced to 1X.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the EECs. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure at the 99.9th percentile of exposure from food to cyfluthrin will occupy 50% of the aPAD for the U.S. population, 51% of the aPAD for females 13 years and older, 82% of the aPAD for infants less than 1 year old and 77% of the aPAD for children 1 to 6 years old. In addition, there is potential for acute dietary exposure to cyfluthrin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO CYFLUTHRIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
General U.S. Population	0.02	50	1.2	0.006	350
All infants (<1 year old)	0.02	82	1.2	0.006	40
Children (1–6 years old)	0.02	77	1.2	0.006	50
Females (13–50 years old)	0.02	51	1.2	0.006	300

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to cyfluthrin from food will utilize 9% of the cPAD for the U.S. population, 6% of the cPAD for all infants less than 1 year old and 17% of the cPAD for children 1 to 6 years old. The registered residential termiticide uses of cyfluthrin do constitute a chronic inhalation exposure scenario; however, the vapor pressure of cyfluthrin is so low (3.3×10^{-8} torr) that such exposures are anticipated to be negligible. In addition, there is potential

for chronic dietary exposure to cyfluthrin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CYFLUTHRIN

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
General U.S. Population	0.024	9	1.2	0.006	770
All infants (< 1 year old)	0.024	6	1.2	0.006	230
Children (1–6 years old)	0.024	17	1.2	0.006	200

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Cyfluthrin is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for cyfluthrin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 360 for adults, 330 for children 1 to 6 years old and 470 for infants less than 1 year old. These aggregated MOEs include average exposure from cyfluthrin residues in food as well as inhalation and dermal exposure of adults; and inhalation, dermal and oral (hand-to-mouth) exposure of infants and children from the residential uses of cyfluthrin on lawns and indoors on carpet.. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of cyfluthrin in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 5 of this unit:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO CYFLUTHRIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
Adult male	360	100	1.2	0.006	610
Adult female	360	100	1.2	0.006	520
Child	330	100	1.2	0.006	170
Infants	470	100	1.2	0.006	190

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Cyfluthrin is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for cyfluthrin.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 210 for adults, 230 for children 1 to 6 years old and 260 for infants less than 1 year old. These aggregated MOEs include average exposure from cyfluthrin residues in food as well as inhalation and dermal exposure of adults; and inhalation, dermal and oral (hand-to-mouth) exposure of infants and children from the residential uses of cyfluthrin on lawns and indoors on carpet. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of cyfluthrin in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 6 of this unit:

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO CYFLUTHRIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Intermediate-Term DWLOC (ppb)
Adult male	210	100	1.2	0.006	440
Adult female	210	100	1.2	0.006	370
Child	230	100	1.2	0.006	140
Infants	260	100	1.2	0.006	150

5. *Aggregate cancer risk for U.S. population*. Cyfluthrin has been classified as ''not likely to be carcinogenic in humans'' based on the results of a carcinogenicity study in mice and the combined chronic toxicity and carcinogenicity study in rats. Therefore, cyfluthrin is not expected to pose a cancer risk to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to cyfluthrin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

A GC method with electron capture detection (GC/ECD) is available for the enforcement of tolerances for cyfluthrin residues in/on plant commodities. This method has an LOQ of 0.05 ppm for cyfluthrin and was previously described in Mobay Report 85823 (''A Gas Chromatographic Method for Baythroid® 2 Residues in Crops,'' MRID 40301501). This method has undergone a successful petition method validation and is available in PAM, Vol II. A GC/ECD method is also available for enforcing tolerances for cyfluthrin residues in animal commodities and is published in PAM II.

B. International Residue Limits

There are no established Codex Maximum Residue Limits (MRLs) for residues of cyfluthrin in/on the commodities for which tolerances are being established, with the exception of maize (field corn grain) at 0.05 ppm. Codex MRLs are currently expressed in terms of cyfluthrin per se. Due to the post harvest use on stored grains, the U.S. tolerance for corn grain is much higher than the Codex maize MRL.

V. Conclusion

Therefore, tolerances are established for residues of cyfluthrin, cyano (4-fluoro-3-phenoxyphenyl) methyl-3-(2,2-didichloroethenyl)-2,2-dimethyl-cyclopropane-carboxylate in or on soybean, seed at 0.03 ppm; soybean, forage at 8.0 ppm; soybean, hay at 4.0 ppm; corn, field, forage at 3.0 ppm; corn, field, stover and corn, pop, stover at 6.0 ppm; grain, cereal, group at 4.0 ppm; corn, field, refined oil at 30 ppm; corn, field, milled byproduct at 7.0 ppm; grain, aspirated fractions at 600 ppm; wheat milled byproducts, except flour at 5.0 ppm; rice, hulls at 18 ppm; rice, bran at 6.0 ppm; barley, bran, oat, bran and rye, bran at 5.0 ppm; milk at 1.0 ppm; milk, fat at 30 ppm; cattle, fat, goat, fat, hog, fat, horse, fat and sheep, fat at 10 ppm; mustard greens at 7.0 ppm; lettuce, leaf at 3.0 ppm; lettuce, head at 2.0 ppm; brassica, head and stem, subgroup at 2.5 ppm; pea, southern, succulent at 0.25 ppm; and pea, dry at 0.15 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0193 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 26, 2002.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please

identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0193, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 18, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.436 is amended by removing from the table in paragraph (b) the entries barley, grain; cattle, fat; goat, fat; hog, fat; horse, fat; oat, grain; sheep, fat; and wheat, grain and by revising paragraph (a)(1) to read as follows:

§ 180.436 Cyfluthrin; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2dimethyl-cyclopropane-carboxylate; CAS No. 68359–37–5) in or on the following raw agricultural commodities:

Commodity	Parts per million
Alfalfa	5.0
Alfalfa, hay	10.0
Barley, bran	5.0
Brassica, head and stem, subgroup	2.5
Carrot	0.20
Cattle, fat	10.0
Cattle, meat	0.40
Cattle, meat by-products	0.40
Citrus, dried pulp	0.3
Citrus, oil	0.3
Corn, field, forage	3.0
Corn, field, milled byproducts	7.0
Corn, field, refined oil	30.0
Corn, field, stover	6.0
Corn, pop, stover	6.0
Corn, sweet, forage	15.00
Corn, sweet, kernel plus cob with husks removed	0.05
Corn, sweet, stover	30.00
Cotton, hulls	2.0
Cotton, refined oil	2.0
Cotton, seed	1.0
Egg	0.01
Fruit, citrus, group	0.2
Goat, fat	10.0
Goat, meat	0.40
Goat, meat byproducts	0.40
Grain, aspirated fractions	600
Grain, cereal, group	4.0
Hog, fat	10.0
Hog, meat	0.40
Hog, meat byproducts	0.40
Hop, dried cones	20.0
Hop, fresh	4.0
Horse, fat	10.0
Horse, meat	0.40
Horse, meat by-products	0.40
Lettuce, head	2.0
Lettuce, leaf	3.0
Milk	1.0
Milk, fat	30.0
Mustard greens	7.0
Oat, bran	5.0
Pea, dry	0.15
Pea, southern, succulent	0.25
Pepper	0.50
Potato	0.01
Poultry, fat	0.01
Poultry, meat	0.01
Poultry, meat by-products	0.01
Radish, roots	1.0
Rice, bran	6.0
Rice, hulls	18.0
Rye, bran	5.0
Sheep, fat	10.0
Sheep, meat	0.40
Sheep, meat by-products	0.40
Sorghum, grain, forage	2.0
Sorghum, grain, stover	5.0
Soybean, forage	8.0
Soybean, hay	4.0
Soybean, seed	0.03
Sugarcane, cane	0.05
Sugarcane, molasses	0.20
Sunflower, forage	5.0
Sunflower, seed	0.02
Tomato	0.20
Tomato, paste	0.5
Tomato, pomace	5.0
Wheat milled by-products, except flour	5.0

* * * * *

[FR Doc. 02–24653 Filed 9–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPT–2002–0030; FRL–7186–9]

RIN 2070–AB27

Revocation of Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking significant new use rules (SNURs) for eight substances promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) based on new data. Based on the new data the Agency no longer finds that activities not described in the corresponding TSCA section 5(e) consent orders for these chemical substances may result in significant changes in human or environmental exposure.

DATES: This final rule is effective on November 26, 2002.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: James Alwood, Chemical Control Division, Office of Pollution Prevention and Toxics (7405M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8974; e-mail address: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this revocation. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Chemical manufacturers	325	Manufacturers, importers, processors, and users of chemicals

Categories	NAICS codes	Examples of potentially affected entities
Petroleum and coal product industries	324	Manufacturers, importers, processors, and users of chemicals

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in title 40 of the Code of Federal Regulations (CFR) at 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register—**Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 721 is available at http://www.access.gpo.gov/ nara/cfr/cfrhtml_00/Title_40/40cfr721_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket ID number OPPT–2002–0030. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

II. Background

A. What Action is the Agency Taking?

The Agency proposed the revocation of these SNURs in the **Federal Register** of March 20, 2002 (67 FR 12950) (FRL–6820–7). The background and reasons for the revocation of each individual SNUR are set forth in the preamble to the proposed revocation. The comment period closed on April 19, 2002. EPA received three comments supporting the revocation of the SNURs. Therefore, EPA is revoking these rules.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.5.

During review of the PMNs submitted for the chemical substances that are the subject of this revocation, EPA concluded that regulation was warranted based on available information that indicated activities not described in the TSCA section 5(e) consent order or the PMN might result in significant changes in human or environmental exposure as described in section 5(a)(2) of TSCA. Based on these findings, SNURs were promulgated.

EPA has revoked the TSCA section 5(e) consent orders that are the basis for these SNURs and no longer finds that activities other than those described in the TSCA section 5(e) consent orders may result in significant changes in human or environmental exposure. The revocation of SNUR provisions for these substances is consistent with the findings set forth in the preamble to the proposed revocation of each individual SNUR.

Therefore, EPA is revoking the SNUR provisions for these chemical substances and will no longer require notice of intent to manufacture, import, or process these substances. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Statutory and Executive Order Reviews

This rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

Since this rule does not impose any requirements, it does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.), the Agency has determined that SNUR revocations, which eliminate requirements without imposing any new ones have no adverse economic impacts.

Since this rule does not impose any requirements it does not require any other action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

This rule does not have tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), do not apply to this rule.

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

This action does not involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order.

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 5, 2002.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.3628, 721.5300, and 721.8170 [Removed]

2. By removing §§ 721.3628, 721.5300, and 721.8170.

[FR Doc. 02–24654 Filed 9–26–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 408

[CMS–1221–F]

RIN 0938–AK42

Medicare Program; Supplementary Medical Insurance Premium Surcharge Agreements

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements legislation contained in section 1839(e) of the Social Security Act (the Act). That statute authorizes a Medicare premium payment arrangement whereby State and local government agencies can enter into an agreement with the Secretary to make periodic lump sum payments for the Supplementary Medical Insurance (SMI) late enrollment premium surcharge amounts due for a designated group of eligible enrollees. Under this rule, we define and set out the basic rules for the new SMI premium surcharge billing agreement. In order to give States additional time for implementation of the provisions of this final rule, we are delaying the rule's effective date to six months from the date of its publication in the **Federal Register**.

EFFECTIVE DATE: This final rule is effective March 26, 2003.

FOR FURTHER INFORMATION CONTACT: Sandra Clarke, (410) 786–7451.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1839(e) of the Social Security Act (the Act), as amended by section 144 of the Social Security Act Amendments of 1994 (Pub. L. 103–432, October 31, 1994), allows States to enter into agreements with us to pay a lump sum for the Part B premium late enrollment surcharge amounts due for a designated group of eligible enrollees. Section 4582 of the Balanced Budget Act of 1997 (Pub. L. 105–33) (BBA) amended the Act by adding language that allows local government agencies to also pay the surcharge. Under section 4582 of the BBA, any appropriate State or local government agency specified by the Secretary may enter into a Supplementary Medical Insurance (SMI) premium surcharge agreement.

This legislation was requested to enable State and local government agencies that are no longer offering a health benefits package to their retirees to pay the SMI late enrollment premium surcharge on a lump sum basis for their retirees who consequently enrolled or reenrolled in the Medicare program.

While covered by the State or local government agency health care plans, some retirees, who believed that these health plans would be sufficient to cover their health care needs, chose not to enroll in Medicare when they first became eligible, or enrolled and subsequently canceled their Medicare coverage. In some cases, these retirees were subsequently notified by their State or local government retirement offices that those agencies would no longer offer a health benefit package to their retirees. The agencies recommended that their retirees enroll or reenroll in Medicare. When they did so, some retirees learned that they would be subject to Medicare's late enrollment premium surcharge. Consequently, State and local government retirement offices contacted us and requested either a waiver of the surcharge or establishment of a special enrollment period for the affected retirees. We denied these requests and determined that the affected retirees were subject to the late enrollment premium surcharge. This prompted some State and local government retirement offices to offer to pay the

surcharge portion of the Supplemental Medical Insurance premium on behalf of their affected retirees. It also prompted a request from a local government agency to enter into a special billing and payment arrangement with us in order periodically to receive a single bill and pay a lump sum for the surcharge amounts due from a specified group of its retirees.

Since there was no law or regulation in place that would have allowed us to send a State or local government agency a single bill to pay a lump sum for the SMI premium surcharge portion for a group of enrollees, we initially denied the request. Subsequently, the Congress enacted legislation that allowed States to pay the Secretary, on a quarterly or other periodic basis, a lump sum for the total amount of the SMI premium surcharges for a group of Medicare enrollees (section 1839(e) of the Act, section 144 of the Social Security Act Amendments (Pub. L. 103–432)). Section 4582 of the BBA subsequently amended section 1839(e) of the Act by adding language that would also allow any appropriate State or local government agency specified by the Secretary to enter into an agreement to pay the SMI premium surcharges on a periodic lump sum basis. Because our third party billing system, which is used for billing and payment of these surcharge amounts, was developed to accommodate monthly billing and payments, all SMI premium surcharge amounts will be billed and paid on a monthly basis.

The election to make lump sum payments of SMI premium surcharges by a State or local government agency under an SMI premium surcharge agreement is strictly voluntary and is provided as a convenience to the State or local government agency.

II. Provisions of the Proposed Regulations

The proposed rule that we published in the **Federal Register** on October 26, 2001 (66 FR 54186) would implement section 1839(e) of the Act, section 144 of the Social Security Act Amendments of 1994 (Pub. L. 103–432), and section 4582 of the BBA. We proposed to make the following changes in 42 CFR part 408:

We would add a new subpart H to the regulations in part 408 (Premiums for Supplementary Medical Insurance). The new subpart would be entitled ''Supplementary Medical Insurance Premium Surcharge Agreements''.

Within the subpart, we would add a section that would contain the authority for allowing States and local government agencies to enter into an agreement with us to pay, on a periodic basis, a lump sum for the total amount of the SMI premium surcharges for a group of eligible Medicare enrollees.

Since there are no existing regulations that prescribe the basic rules for making periodic lump sum payments of the SMI premium surcharge under a special billing arrangement, we would add sections entitled ''Definitions'' Conditions for participation'', ''Application procedures'', ''Billing and payment procedures'', and ''Termination of SMI premium surcharge agreements''. In the ''Definitions'' section, we would define SMI premium surcharge and SMI premium surcharge agreement. SMI premium surcharge would be defined as the amount that the standard monthly SMI premium would be increased for late enrollment and for reenrollment as specified in §§ 408.22 through 408.25. SMI premium surcharge agreement would be defined as an agreement entered into between a State or local government agency and us whereby the State or local government agency would agree to periodically pay a lump sum for the premium surcharge amounts due from a specified group of eligible enrollees.

The ''Conditions for participation'' section would identify individuals who could be included under an SMI premium surcharge agreement, identify individuals excluded from coverage under an agreement, and require the State or local government agency to secure the written consent of each enrollee covered under the agreement. This section would also state that as a condition for participation the State or local government agency would be required to establish an automated data exchange with us to electronically transmit addition, removal, and change records and make all monthly SMI premium surcharge payments via electronic funds transfer.

We would identify eligible individuals as those who, at the time they are added under the premium surcharge agreement, are enrolled under Medicare Part B (SMI) and are responsible for paying the SMI base premiums and surcharges either through direct remittance or benefit withholding. Eligible individuals may also be those who receive a Railroad Retirement Board or Civil Service annuity and are having the SMI premium and surcharge withheld.

We would identify individuals excluded from coverage under an SMI premium surcharge agreement as those who are not enrolled in SMI, those whose SMI premiums are being paid by a State Welfare Agency under a State buy-in agreement, or those whose SMI premiums and surcharges are being paid under a group billing agreement.

In the ''Application procedures'' section, we described how the State or local government agency may contact its CMS regional office (RO), obtain an application, and return it for approval.

The ''Billing and payment'' section would state that the State or local government agency must pay the SMI premium surcharge for each eligible enrollee who is included in the agreement for the time period beginning with the month the enrollee is added and continuing through the month the State or local government agency notifies us that it is necessary to remove the enrollee, the month the enrollee's Part B coverage terminates, or the month of the enrollee's death, whichever comes first.

In the ''Termination of SMI premium surcharge agreement'' section, we proposed that a State or local government agency may voluntarily terminate an SMI premium surcharge agreement by notifying us, in writing, at least 30 days before the termination date.

We also proposed that we may terminate an SMI premium surcharge agreement with 30 days notice if the State or local government agency fails to comply with the terms of the agreement, is delinquent in payment 60 days or more, three times in any calendar year, or fails to comply with prescribed regulations or instructions. We proposed that we may terminate the agreement at any time if we find that the State or local government agency is not acting in the best interest of the enrollees, or us, or for any other reason. If an agreement is terminated by us, the State or local government agency must wait 3 years from the effective date of the termination before it can request to enter into another agreement.

III. Analysis and Responses to Public Comments

In response to the publication of the proposed rule on October 26, 2001 (66 FR 54186), we did not receive any public comments.

IV. Provisions of the Final Rule

With the exception of changes to proposed § 408.210(b); the addition of a six-month delay in the rule's effective date, to allow additional time for States and local governments to implement the provisions of this rule; and a change of the grace period for payment from 25 to 10 days (§ 408.207(b)), we are adopting the provisions of the proposed rule published on October 26, 2001 (66 FR

54186) as the provisions of this final rule.

In proposed § 408.210(b)(2), we subsequently decided that we may terminate the agreement with a State or local government agency with 30 days advance notice if the State or local government agency's payments are delinquent 30 days or more, rather than if the payments are delinquent 60 days or more, three times in any calendar year. This change was made because the proposed rule would have allowed a State or local government agency to be delinquent in its payments for almost one-half of a year before any corrective action was taken. Upon further reflection, we decided that this was too much time and that it would not be in the best interests of the State or local government agency, the beneficiaries, or us to allow the delinquent state to continue for so long a time. This section was also renumbered to become § 408.210(b)(1).

In proposed § 408.210(b)(1), we have added language in this final rule to clarify that we may terminate the agreement with a State or local government agency at any time if we find that it is not acting in the best interest of the enrollees, or us, or for any other reason other than delinquent payments or failure to comply with the terms of the agreement or procedures promulgated by us. This section was renumbered to become § 408.210(b)(3).

In § 408.27(b)(2), we are revising the grace period to 10 days from the 25 days suggested in the proposed rule because we believe that the 10-day period allows ample opportunity for States and local agencies to send us their payments and more accurately reflects typical business practices.

We are retaining all other language of the proposed regulation because we did not receive any public comments.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA 1995), we are required to provide 60 days notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- The minimization of the information collection burden on the affected public, including automated collection techniques.

Section 408.202 Conditions for Participation

In the October 26, 2001 proposed rule (66 FR 54186), under this section, a State or local government retirement agency would secure from each Medicare enrollee for whom the surcharge will be paid a written, signed, statement that would authorize us to send billing notices directly to the State or local government agency and to release any information required under the SMI premium surcharge agreement. As stated in the proposed rule, the burden associated with this requirement is the time and effort for the enrollee to sign the required authorization statement. We estimated that for the two States affected by this requirement, each State will obtain an average of 1,175 authorizations. Since this requirement will be standardized and incorporated into the enrollment process, we anticipated that it would take each enrollee 5 minutes to provide the necessary authorization. Therefore, in the proposed rule we projected that the total burden associated with this requirement is 196 hours (5 minutes × 1,175 enrollees × 2 retirement agencies = 196 total hours).

This section also requires that the State or local government agency maintain the authorization statement for each enrollee in its files as long as the enrollee is covered by the agreement.

Lastly, this section requires a State or local government agency to certify to us, in writing, that an authorization statement is on file for each enrollee covered under the SMI premium surcharge agreement. Only one certification is necessary for the entire group of covered enrollees. Given that this requirement affects only two entities, it is not subject to the PRA under 5 CFR 1320.3(c).

Section 408.205 Application Procedures

In the October 26, 2001 proposed rule (66 FR 54186), under this section, a State interested in entering into an agreement would return to the CMS Regional Office (RO) two completed copies of the application materials.

As stated in the proposed rule, we estimate that two States/agencies will apply for an agreement. Thus, this requirement is not subject to the PRA in accordance with 5 CFR 1320.3(c).

Section 408.207 Billing and Payment Procedures

In the proposed rule, under paragraph (a) of this section, the State or local government agency must transmit electronically an input file to us containing addition and removal records at least once each calendar month, but may transmit this information as often as once a day.

Under paragraph (d) of this section, if a State or local government agency disagrees with the amount assessed in a billing statement or interest charge, it must notify us as required under this section. Given that this activity is conducted as part of an administrative action, audit, and/or investigation, this requirement is exempt from the PRA under 5 CFR 1320.4.

Section 408.210 Termination of SMI Premium Surcharge Agreement

In the October 26, 2001 proposed rule (66 FR 54186), under paragraph (a), if the State or local government agency voluntarily terminates its agreement with us, it must notify us, in writing, at least 30 days before the effective date of the termination.

As stated in the proposed rule, we estimate that two States/agencies will be subject to the provisions of this section. Thus, this requirement is not subject to the PRA in accordance with 5 CFR 1320.3(c).

The total burden associated with this rule is 196 annual hours.

We have submitted a copy of this final rule to OMB for its review of the information collection requirement in § 408.202. These requirements are not effective until they have been approved by the OMB.

VI. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This is not a major rule. It has no significant economic impact, on either costs or savings, because either

the enrollee or the State or local government agency would remit the same amount to us whether or not there is an SMI premium surcharge agreement in effect. The only difference is that under this rule, the State or local government agency is allowed to voluntarily elect to remit SMI premium surcharge amounts in a lump sum payment on behalf of eligible Medicare enrollees.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals and States are not included in the definition of small entities. Therefore, we have determined, and we certify, that this final regulation does not result in a significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act (the Act) requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital located outside of a Metropolitan Statistical Area with fewer than 100 beds. This rule has no impact on any small rural hospitals. Therefore, we have determined, and we certify, that this final regulation does not have a significant effect on the operations of a substantial number of small rural hospitals.

B. The Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule has no effect on the annual expenditures of any State, local, or tribal government, or the private sector. Participation in an SMI premium surcharge agreement is strictly voluntary and does not change the total amount of SMI premium surcharges paid by a State or local government agency. Therefore, we have determined, and we certify, that this final regulation does not result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million.

C. Federalism

We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism, and we have determined that it does not significantly affect the rights, roles, and responsibilities of States. This rule is in response to a specific request from a State/local government and is an example of regulatory flexibility and cooperation with States. Also, in order to give States additional time to implement the rule's provisions, we have delayed the effective date of the rule to six months from the date of publication in the **Federal Register**.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget. This final rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 42 CFR Part 408

Medicare.

Accordingly, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV, part 408 as follows:

PART 408—PREMIUMS FOR SUPPLEMENTAL MEDICAL INSURANCE

1. The authority citation for part 408 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Add a new subpart H, consisting of §§ 408.200 through 408.210, to part 408, to read as follows:

Subpart H—Supplementary Medical Insurance Premium Surcharge Agreements

Sec.

Subpart H—Supplementary Medical Insurance Premium Surcharge Agreements

§ 408.200 Statutory basis.

This subpart implements provisions of section 1839(e) of the Social Security Act that allow State or local government agencies to enter into an agreement with the Secretary to pay, on a quarterly or other periodic basis, a lump sum for the total of the SMI premium late enrollment surcharge amounts due for a group of eligible enrollees.

§ 408.201 Definitions.

For purposes of this subpart, the following definitions apply:

SMI premium surcharge means the amount that the standard monthly SMI premium is increased for late enrollment or for reenrollment as specified in §§ 408.22 through 408.25.

SMI premium surcharge agreement means a written arrangement between the Secretary and a State or local government agency to pay, on a quarterly, monthly, or other periodic basis, a lump sum for the SMI premium surcharge amounts due for a designated group of eligible enrollees.

§ 408.202 Conditions for participation.

(a) A State or local government agency may apply to CMS to enter into an SMI premium surcharge agreement if the following conditions are met:

(1) Each individual designated for coverage under the premium surcharge agreement must be enrolled in Medicare Part B at the time the individual is added to the premium surcharge account.

(2) Each enrollee designated for coverage under the agreement must, at the time the individual is added to the premium surcharge account, be responsible for paying the base premium and surcharge through direct remittance or benefit withholding from Social Security or Railroad Retirement benefits or a Civil Service annuity.

(3) Each enrollee designated for coverage under the agreement must, at the time the individual is added to the premium surcharge account, not have premiums paid by a State Welfare Agency under a State buy-in agreement as described in § 407.40 of this chapter or under a group billing arrangement as described in § 408.80.

(b) The State or local government agency must secure from each enrollee a signed, written statement authorizing CMS to send billing notices directly to the State or local government agency, and to release to the State or local government agency information required under the SMI premium surcharge agreement.

(c) The authorization statement for each enrollee must be retained in the State or local government agency files for as long as the enrollee is covered by the agreement. These authorization statements need not be forwarded to CMS.

(d) The State or local government agency must certify to CMS, in writing, that an authorization statement is on file for each enrollee covered under the SMI

premium surcharge agreement. Only one certification is necessary for the entire group of covered enrollees.

(e) A State or local government agency must establish an automated data exchange with CMS using the Third Party Premium Collection System, in order to transmit electronically an input file that will be used to add or remove enrollees from the billing system.

§ 408.205 Application procedures.

(a) A State or local government agency must contact its CMS regional office (RO) to request application materials.

(b) If interested in entering into an agreement, the State or local government agency must return to the RO two copies of the completed application materials.

(c) CMS reviews the application materials, and, when they are approved, notifies the State or local government agency, and the RO.

§ 408.207 Billing and payment procedures.

(a) *Adding and removing enrollees.* The State or local government agency must transmit an input file containing addition and removal records electronically to CMS as follows:

(1) Input files must be transmitted at least once each calendar month, but may be transmitted as often as once a day.

(2) CMS will not add or remove enrollees retroactively, except for removals upon the death of an enrollee.

(3) The State or local government agency must pay the SMI premium surcharge for each eligible enrollee who is included in the agreement for the time period beginning with the month the enrollee is added and continuing through the month the State or local government agency informs CMS that the enrollee is to be removed, the month the enrollee's Part B coverage terminates, or the month of the enrollee's death, whichever comes first.

(b) *Payment and grace period.* Payment must be made to CMS as follows:

(1) Payment to CMS must be received by CMS by the first day of each month.

(2) There is a 10-day grace period for receipt of payment.

(3) Payment must be made to CMS via electronic funds transfer.

(c) *Late payment penalties.* CMS may assess interest for any payment it does not receive by the first day of the month as follows:

(1) Interest will be assessed at the SMI trust fund rate as computed for new investments in accordance with section 1841(c) of the Act.

(2) Interest will be waived if the full payment is received by the 10th day of the month in which it is due.

(3) Interest will be calculated and assessed in 30-day increments.

(4) Interest will be assessed on the balance of the amount billed that remains unpaid at the expiration of the grace period and unpaid balances from prior periods.

(5) Interest will continue to accrue on unpaid amounts until the balance is paid in full.

(d) *Disagreement over billing amounts or interest.* If the State or local government agency disagrees with the amount assessed in a billing statement or interest charge, it must notify CMS as follows:

(1) The State or local government agency must provide evidence suitable to CMS to substantiate its claim.

(2) The State or local government agency must continue to make full payment while CMS evaluates the evidence provided.

(3) Credit for payment amounts or interest that CMS determines to be due to the State or local government agency will be reflected as an adjustment in subsequent bills, effective on the date the corrected amount would have been due.

§ 408.210 Termination of SMI premium surcharge agreement.

(a) *Termination by the State or local government agency.* The State or local government agency may voluntarily terminate its agreement with CMS as follows:

(1) The State or local government agency must notify CMS, in writing, at least 30 days before the effective date of the termination.

(2) The State or local government agency must pay any unpaid premium surcharge amounts and interest due within 30 days after the effective date of the termination.

(3) Interest will continue to accrue until all amounts due are paid in full.

(b) *Termination by CMS.* CMS may terminate the agreement with a State or local government agency as follows:

(1) If a State or local government agency's payments are delinquent 30 days or more, CMS may terminate the agreement with 30 days advance notice.

(2) If the State or local government agency fails to comply with the terms of the agreement or procedures promulgated by CMS, CMS may terminate the agreement with 30 days advance notice.

(3) If CMS finds that the State or local government agency is not acting in the best interest of the enrollees, or CMS, or for any reason other than those in paragraphs (b)(1) and (b)(2) of this section, CMS may terminate the agreement at any time.

(4) The State or local government agency must pay all outstanding premium surcharge and any interest amounts due within 30 days after the effective date of the termination.

(5) Interest will continue to accrue until all amounts due are paid in full.

(6) After the agreement is terminated, CMS will resume collection of the premium surcharge from the enrollees covered under the terminated agreement.

(7) If an agreement is terminated by CMS, the State or local government agency must wait 3 years from the effective date of the termination before it can request to enter into another SMI premium surcharge agreement.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 18, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: June 13, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–23845 Filed 9–26–02; 8:45 am]

BILLING CODE 4120–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2551

RIN 3045–AA29

Senior Companion Program; Amendments

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: These amendments to the Final Regulation governing the Senior Companion Program include: improving access of persons with limited English speaking proficiency; clarifying what income should be counted for purposes of determining income eligibility of an applicant to become a stipended Senior Companion; providing increased flexibility to sponsors to determine the hours of service of Senior Companions; reducing restrictions on sponsors serving as volunteer stations; and providing for Senior Companions to serve as volunteer leaders.

DATES: These amendments are effective October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Peter L. Boynton, 202–606–5000, ext. 499.

SUPPLEMENTARY INFORMATION: The Corporation published a notice of proposed rulemaking (NPRM) for the Senior Companion Program, 45 CFR part 2551, in the **Federal Register** at 67 FR 18846, dated April 17, 2002.

Summary of Main Comments

In response to the Corporation's invitation in the NPRM, the Corporation received 19 letter and/or email responses addressing the proposed amendments to the Senior Companion rules. Ten were in full support of all of the proposed rules. One expressed support for the amendment concerning volunteer stations, without commenting on other provisions. One expressed support for the amendment concerning service hours,without commenting on other provisions. Six expressed a preference for lowering the service hour requirement to 10 hours and four sought clarifications. None opposed any of the proposed amendments.

Following are the Corporation's responses to comments received:

Comment: With reference to § 2551.51, supported the lowering of the service requirement to a minimum of 10 rather than 15 hours per week.

Response: The Corporation understands the interest of some respondents to lower further the minimum service requirement. However, considering overall experience and the other comments received, the Corporation believes the proposed minimum of 15 hours provides sponsors and volunteers with sufficient flexibility.

Comment: Sought to clarify the relationship between the stipend paid to Senior Companions and the monetary incentive that can be paid to volunteer leaders.

Response: The monetary incentive that can be paid to Senior Companion volunteer leaders is in addition to the stipend.

Comment: Asked for clarification whether volunteer leaders can perform staff duties.

Response: § 2551.121(b), *Non-displacement of employed workers,* addresses this issue. A Senior Companion may not perform duties that would otherwise be performed by paid staff or which would supplant the hiring of or result in the displacement of paid staff, or impair existing contracts for service.

Comment: Asked whether Senior Companion volunteer leaders must meet income eligibility requirements.

Response: Yes, if they receive a stipend. All stipended Senior Companions must meet income eligibility requirements.

Comment: With reference to § 2551.23(c)(2)(iv), asked if the Corporation would allow costs for translating basic information into different languages and for the use of interpreters.

Response: Such costs are allowable if they meet the requirements of § 2551.93.

Impact of Various Acts and Executive Orders

After carefully reviewing the changes implemented by this amendment, it was determined that:

(1) This was a significant regulatory action under section 3(f)(4) of Executive Order 12866 ''Regulatory Planning and Review'', and required a review by the Office of Management and Budget;

(2) The Corporation hereby certifies that the Regulatory Flexibility Act does not apply because there is no ''significant economic impact on a substantial number of small entities'';

(3) That the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II) does not apply because the amendment does not result in any annual expenditures of $100 million by State, local, Indian Tribal governments or the private sector;

(4) That the Paperwork Reduction Act does not apply because the amendments do not impose any additional reporting or record-keeping requirements;

(5) That the Small Business Regulatory Enforcement Fairness Act of 1996 does not apply because it is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, and would not result in an annual effect on the economy of $100 million or more; result in an increase in cost or prices; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets; and

(6) That Executive Order 13132, ''Federalism'' does not apply because it would not have substantial direct effects on the States or the relationship between the national government and the States.

List of Subjects in 45 CFR Part 2551

Aged, Grant programs—social programs, Volunteers.

For the reasons set forth in the preamble, the Corporation for National and Community Service amends 45 CFR part 2551 as follows:

PART 2551—SENIOR COMPANION PROGRAM

1. The authority citation for part 2551 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*

2. Revise § 2551.23(c)(2)(iv) to read as follows:

§ 2551.23 What are a sponsor's program responsibilities?

* * * * *

(c) * * *

(2) * * *

(iv) That states the station assures it will not discriminate against volunteers or in the operation of its program on the basis of race; color; national origin, including individuals with limited English proficiency; sex; age; political affiliation; religion; or on the basis of disability, if the participant or member is a qualified individual with a disability; and

* * * * *

3. In § 2551.42, revise paragraph (b) to read as follows:

§ 2551.42 What income guidelines govern eligibility to serve as a stipended Senior Companion?

* * * * *

(b) For applicants to become stipended Senior Companions, annual income is projected for the following 12 months, based on income at the time of application. For serving stipended Senior Companions, annual income is counted for the past 12 months. Annual income includes the applicant or enrollee's income and that of his/her spouse, if the spouse lives in the same residence. Sponsors shall count the value of shelter, food, and clothing, if provided at no cost by persons related to the applicant, enrollee, or spouse.

* * * * *

4. Amend § 2551.45 by republishing the introductory text and adding paragraph (f) to read as follows:

§ 2551.45 What cost reimbursements are provided to Senior Companions?

Cost reimbursements include:

* * * * *

(f) Leadership incentive. Senior Companions who serve as volunteer leaders, assisting new Senior Companions or coordinating other Senior Companions in accordance with the Act, may be paid a monetary incentive.

5. Revise § 2551.51 to read as follows:

§ 2551.51 What are the terms of service of a Senior Companion?

A Senior Companion shall serve a minimum of 15 hours per week and a

maximum of 40 hours per week. A Senior Companion shall not serve more than 2088 hours per year. Within these limitations, a sponsor may set service policies consistent with local needs.

6. Revise § 2551.61 to read as follows:

§ 2551.61 May a sponsor serve as a volunteer station?

Yes, a sponsor may serve as a volunteer station, provided this is part of the application workplan approved by the Corporation.

7. Revise § 2551.71 to read as follows:

§ 2551.71 What requirements govern the assignment of Senior Companions?

(a) Senior Companion assignments shall provide for Senior Companions to give direct services to one or more eligible adults that:

(1) Result in person-to-person supportive relationships with each client served.

(2) Support the achievement and maintenance of the highest level of independent living for their clients.

(3) Are meaningful to the Senior Companion.

(4) Are supported by appropriate orientation, training, and supervision.

(b) Senior Companions may serve as volunteer leaders, and in this capacity may provide indirect services. Senior Companions with special skills or demonstrated leadership ability may assist newer Senior Companion volunteers in performing their assignments and in coordinating activities of such volunteers.

(c) Senior Companions shall not provide services such as those performed by medical personnel, services to large numbers of clients, custodial services, administrative support services, or other services that would detract from their assignment.

8. Revise § 2551.72 to read as follows:

§ 2551.72 Is a written volunteer assignment plan required for each volunteer?

(a) All Senior Companions performing direct services to individual clients in home settings and individual clients in community-based settings, shall receive a written volunteer assignment plan developed by the volunteer station that:

(1) Is approved by the sponsor and accepted by the Senior Companion;

(2) Identifies the client(s) to be served;

(3) Identifies the role and activities of the Senior Companion and expected outcomes for the client(s);

(4) Addresses the period of time each client is expected to receive such services; and

(5) Is used to review the status of the Senior Companion's services in working with the assigned client(s), as well as the impact of the assignment on the client(s).

(b) If there is an existing plan that incorporates paragraphs (a)(2), (3), and (4) of this section, that plan shall meet the requirement.

(c) All Senior Companions serving as volunteer leaders shall receive a written volunteer assignment plan developed by the volunteer station that:

(1) Is approved by the sponsor and accepted by the Senior Companion;

(2) Identifies the role and activities of the Senior Companion and expected outcomes;

(3) Addresses the period of time of service; and

(4) Is used to review the status of the Senior Companion's services identified in the assignment plan, as well as the impact of those services.

Dated: September 23, 2002.

Tess Scannell,

Director, National Senior Service Corps.

[FR Doc. 02–24612 Filed 9–26–02; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2552

RIN 3045–AA30

Foster Grandparent Program; Amendments

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: These amendments to the Final Regulation governing the Foster Grandparent Program include: providing increased flexibility to sponsors to determine the hours of service of Foster Grandparents; reducing restrictions on sponsors serving as volunteer stations; clarifying what income should be counted for purposes of determining income eligibility of an applicant to become a stipended Foster Grandparent; and improving access of persons with limited English speaking proficiency.

DATES: The amendments are effective October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Peter L. Boynton, 202–606–5000, ext. 499.

SUPPLEMENTARY INFORMATION: The Corporation published a notice of proposed rulemaking (NPRM) for the Foster Grandparent Program, 45 CFR part 2552, in the **Federal Register** at 67 FR 18847, dated April 17, 2002.

Summary of Main Comments

In response to the Corporation's invitation in the NPRM, the Corporation received 20 letter and/or email responses addressing the proposed amendments to the Foster Grandparent rules. Ten were in full support of all of the proposed rules. One expressed support for the amendment concerning volunteer stations, without commenting on other provisions. Two expressed support for the amendment concerning service hours and/or projecting income, without commenting on the other provisions. Six supported lowering the service hour requirement to 10 hours and one sought a clarification. None opposed any of the proposed amendments. Following are the Corporation's responses to comments received:

Comment: With reference to § 2552.51, supported the lowering of the service requirement to a minimum of 10 rather than 15 hours per week.

Response: The Corporation understands the interest of some respondents to lower further the minimum service requirement. However, considering overall experience and the other comments received, the Corporation believes the proposed minimum of 15 hours provides sponsors and volunteers with sufficient flexibility.

Comment: With reference to § 2552.42(b), suggests that projected income should also be used in the case of Foster Grandparents who have experienced a change in circumstance.

Response: The provisions of § 2552.42 (b) provide for serving stipended Foster Grandparents that their annual income is counted for the past 12 months. If their income has decreased, they would remain eligible to receive a stipend. If it has increased, then the annual review of income eligibility specified in § 2552.23(h) would determine whether they continue to remain eligible for a stipend.

Comment: With reference to § 2552.51, asks how projects are expected to pay stipends of volunteers serving as much as 2088 hours per year.

Response: While the amended § 2552.51 provides that a single Foster Grandparent may serve up to 2088 hours per year, each sponsor's notice of grant award provides for delivery of an agreed upon number of volunteer service years (VSYs), defined as 1044 hours. Therefore, when the amendment goes into effect, the service of a single Foster Grandparent for 2088 hours will be equivalent to two VSYs.

Impact of Various Acts and Executive Orders

After carefully reviewing the changes implemented by this amendment, it was determined that:

(1) This was a significant regulatory action under section 3(f)(4) of Executive Order 12866 ''Regulatory Planning and Review'', and required a review by the Office of Management and Budget;

(2) The Corporation hereby certifies that the Regulatory Flexibility Act does not apply because there is no ''significant economic impact on a substantial number of small entities';

(3) That the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II) does not apply because the amendment does not result in any annual expenditures of $100 million by State, local, Indian Tribal governments or the private sector;

(4) That the Paperwork Reduction Act does not apply because the amendments do not impose any additional reporting or record-keeping requirements;

(5) That the Small Business Regulatory Enforcement Fairness Act of 1996 does not apply because it is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, and would not result in an annual effect on the economy of $100 million or more; result in an increase in cost or prices; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets; and

(6) That Executive Order 13132, ''ralism'' does not apply because it would not have substantial direct effects on the States or the relationship between the national government and the States.

List of Subjects in 45 CFR Part 2552

Aged, Grant programs—social programs, Volunteers.

For the reasons set forth in the preamble, the Corporation for National and Community Service amends 45 CFR part 2552 as follows:

PART 2552—FOSTER GRANDPARENT PROGRAM

1. The authority citation for part 2552 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*

2. Revise § 2552.23(c)(2)(iv) to read as follows:

§ 2552.23 What are a sponsor's program responsibilities?

* * * * *

(c) * * *

(2) * * *

(iv) That states the station assures it will not discriminate against Foster Grandparents or in the operation of its program on the basis of race; color; national origin, including individuals with limited English proficiency; sex; age; political affiliation; religion; or on the basis of disability, if the participant or member is a qualified individual with a disability; and

* * * * *

3. In § 2552.42, revise paragraph (b) to read as follows:

§ 2552.42 What income guidelines govern eligibility to serve as a stipended Foster Grandparent?

* * * * *

(b) For applicants to become stipended Foster Grandparents, annual income is projected for the following 12 months, based on income at the time of application. For serving stipended Foster Grandparents, annual income is counted for the past 12 months. Annual income includes the applicant or enrollee's income and that of his/her spouse, if the spouse lives in the same residence. Sponsors shall count the value of shelter, food, and clothing, if provided at no cost by persons related to the applicant, enrollee, or spouse.

* * * * *

4. Revise § 2552.51 to read as follows:

§ 2552.51 What are the terms of service of a Foster Grandparent?

A Foster Grandparent shall serve a minimum of 15 hours per week and a maximum of 40 hours per week. A Foster Grandparent shall not serve more than 2088 hours per year. Within these limitations, a sponsor may set service policies consistent with local needs.

5. Revise § 2552.61 to read as follows:

§ 2552.61 May a sponsor serve as a volunteer station?

Yes, a sponsor may serve as a volunteer station, provided this is part of the application workplan approved by the Corporation.

Dated: September 23, 2002.

Tess Scannell,

Director, National Senior Service Corps.

[FR Doc. 02–24611 Filed 9–26–02; 8:45 am]

BILLING CODE 6050–$$–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 02–64; FCC 02–205]

Assessment and Collection of Regulatory Fees for Fiscal Year 2002

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission makes the following edits to the *Assessment and Collection of Regulatory Fees For Fiscal Year 2002,* Report and Order, adopted on July 3, 2002 and released on July 5, 2002.

DATES: Effective September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: The Office of the Managing Director wishes to make the following corrections in our recently released *Assessment and Collection of Regulatory Fees for Fiscal Year 2002, Report and Order* (67 FR 46297 (July 12, 2002). An Erratum identifying these corrections was released on August 21, 2002. The corrections are as follows:

1. On page 46301, paragraph 26 is corrected to read as follows:

v. Standard Fee Calculations and Payment Dates

26. For licensees and permittees of Media (formerly Mass Media) services, the responsibility for payment of regulatory fees rests with the holder of the permit or license on October 1, 2001. However, in instances where a Media service license or authorization is *transferred or assigned after October 1, 2001,* and arrangements to pay have not been made between the two parties, the fee is still due and must be paid by the licensee or holder of the authorization on the date that the fee payment is due. For licensees, permittees and holders of other authorizations in the Wireline Competition Bureau (formerly Common Carrier) and Cable Services (presently within the Media Bureau) whose fees are not based on a subscriber, unit, or circuit count, the fees paid should be for any authorization issued on or before *October 1, 2001.* A pending change in the status of a license or permit that is not granted as of that date is not taken into account, and the fee is based on the authorization that existed on October 1, 2001.

2. On page 46325, Attachment H, ''Factors, Measurements and Calculations That Go Into Determining

Station Signal Contours and Associated Population Coverages'' is corrected to read as follows:

AM Stations

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§ 73.150 and 73.152 of the Commission's rules.[1] Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMSL was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in § 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials.[2] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–24535 Filed 9–26–02; 8:45 am]

BILLING CODE 6712–02–P

FEDERAL COMMUNICATIONS COMMISION

47 CFR Part 78

[CS Docket No. 99–250, FCC 02–149]

Cable Television Relay Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: In this document the Commission amended its rules to expand eligibility for licenses in the Cable Television Relay Service (CARS) to all Multichannel Video Programming Distributors (''MVPDs''). The action created an alternative channel scheme for 12 GHz CARS frequencies. Because an error was made in the publication of the final rule, this document contains a correction to the final rule document, which was published in the **Federal Register** on June 27, 2002 (67 FR 43257).

DATES: Effective September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne T. McKee, 202–418–2355, or John P. Wong, 202–418–7012.

SUPPLEMENTARY INFORMATION: On June 27, 2002 (67 FR 43257), the **Federal Register** published a final rule in this proceeding. Instruction 3 revised the tables in § 78.18(a)(2) to add an alternate channel regime. The table for the Group C Channels incorrectly identified the lower boundaries of Alternate Channels Ca05 through Ca09. This document corrects § 78.18(a)(2).

In rule FR Doc. 02–16093 published June 27, 2002 (67 FR 63257) make the following corrections.

On page 43259, in § 78.18, the Group C Channels table in paragraph (a)(2) is corrected to read as follows:

§ 78.18 Frequency Assignments.

(a) * * *

(2) * * *

GROUP C CHANNELS

Designation	Channel boundaries (GHz) [C channels]	Alternate change boundaries (GHz) [Ca channels]
C01[1]	12.7005–12.7065	12.7005–12.7065
C02[1]	12.7065–12.7125	12.7065–12.7125
C03[1]	12.7125–12.7185	12.7125–12.7185
C04[1]	12.7185–12.7225[2]	12.7185–12.7245
C05[1]	12.7225–12.7285	12.7245–12.7305
C06[1]	12.7285–12.7345	12.7305–12.7365
C07[1]	12.7345–12.7405	12.7365–12.7425
C08[1]	12.7405–12.7465	12.7425–12.7485
C09[1]	12.7465–12.7525	12.7485–12.7545
C10[1]	12.7525–12.7545[2]	
C11[1]	12.7545–12.7605	12.7545–12.7605
C12[1]	12.7605–12.7665	12.7605–12.7665
C13[1]	12.7665–12.7725	12.7665–12.7725
C14[1]	12.7725–12.7785	12.7725–12.7785
C15[1]	12.7785–12.7845	12.7785–12.7845
C16[1]	12.7845–12.7905	12.7845–12.7905
C17[1]	12.7905–12.7965	12.7905–12.7965
C18[1]	12.7965–12.8025	12.7965–12.8025
C19[1]	12.8025–12.8085	12.8025–12.8085
C20[1]	12.8085–12.8145	12.8085–12.8145
C21[1]	12.8145–12.8205	12.8145–12.8205
C22[1]	12.8205–12.8265	12.8205–12.8265

[1] 47 CFR 73.150 and 73.152.

[2] 47 CFR 73.313.

GROUP C CHANNELS—Continued

Designation	Channel boundaries (GHz) [C channels]	Alternate change boundaries (GHz) [Ca channels]
C23 [1]	12.8265–12.8325	12.8265–12.8325
C24 [1]	12.8325–12.8385	12.8325–12.8385
C25 [1]	12.8385–12.8445	12.8385–12.8445
C26 [1]	12.8445–12.8505	12.8445–12.8505
C27 [1]	12.8505–12.8565	12.8505–12.8565
C28 [1]	12.8565–12.8625	12.8565–12.8625
C29 [1]	12.8625–12.8685	12.8625–12.8685
C30 [1]	12.8685–12.8745	12.8685–12.8745
C31 [1]	12.8745–12.8805	12.8745–12.8805
C32 [1]	12.8805–12.8865	12.8805–12.8865
C33 [1]	12.8865–12.8925	12.8865–12.8925
C34 [1]	12.8925–12.8985	12.8925–12.8985
C35 [1]	12.8985–12.9045	12.8985–12.9045
C36 [1]	12.9045–12.9105	12.9045–12.9105
C37 [1]	12.9105–12.9165	12.9105–12.9165
C38 [1]	12.9165–12.9225	12.9165–12.9225
C39 [1]	12.9225–12.9285	12.9225–12.9285
C40 [1]	12.9285–12.9345	12.9285–12.9345
C41 [1]	12.9345–12.9405	12.9345–12.9405
C42 [1]	12.9405–12.9465	12.9405–12.9465
C43 [1]	12.9465–12.9525	12.9465–12.9525

[1] See footnote 1 following GROUP A CHANNELS.
[2] For transmission of pilot subcarriers or other authorized narrow band signals.

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–24594 Filed 9–26–02; 8:45 am]

BILLING CODE 6412–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 90

[WT Docket No. 96–86; FCC 02–67]

The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission finalizes various technical and operational rules and policies regarding use of public safety frequencies in the 764–776 MHz and 794–806 MHz bands designated for narrowband Interoperability uses. (''Interoperability'' is used here to mean an essential communications link within public safety and public service wireless communications systems which permits units from two or more different entities to interact with one another and to exchange information according to a prescribed method in order to achieve predictable results.) This action follows the recommendation of the Public Safety National Coordination Committee (NCC). Also, in this document the Commission addresses petitions for reconsideration or clarification of the *Fourth Report and Order*. Finally the Commission considers on its own motion several matters prompted by these petitions and other filings. These Commission actions will facilitate public safety Interoperability capabilities in the 700 MHz Band.

DATES: This rule is effective October 28, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden (202) 418–1428.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Fourth Memorandum Opinion and Order,* FCC 02–67, adopted on March 5, 2002, and released on March 14, 2002, as corrected by *Erratum,* DA 02–902 (rel. April 19, 2002), and *Second Erratum,* DA–02–2297 (rel. September 20, 2002). The full text of this *Fourth Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text with the summarized band plan chart may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

1. We have carefully considered the issues presented on reconsideration of the *Fourth Report and Order,* 66 FR 10632, February 16, 2001. We agree with petitioners that ''secondary trunking channels'' ought to be evenly distributed among all four former TV channels 63, 64, 68, and 69, but decline to designate 6.25 kHz bandwidth ''guard channels,'' immediately above and below each narrowband Interoperability channel set (12.5 kHz bandwidth). Because the proposed pre-coordination database is not yet operational, we believe it premature, at this time, to mandate that public safety entities use such a database as a condition of licensing in the 700 MHz public safety band. In addition, we continue to believe that states and local jurisdictions are in the best position to determine access priority levels, and thus we refrain from establishing nationwide, codified priority levels in the 700 MHz public safety band. Likewise, we affirm our decision not to adopt a table of Interoperability channel assignments for nationwide use. Finally, we believe that adoption of Project 25 Phase I as the digital voice standard for

the 700 MHz public safety band Interoperability channels will allow for early entry into that spectrum by public safety entities located in areas presently unencumbered by television stations operating on TV channels 63, 64, 68, and 69; thus we do not believe a transition period is necessary before the standard becomes mandatory.

I. Procedural Matters

A. Regulatory Flexibility Act

2. Paragraph four contains a Supplemental Final Regulatory Flexibility Analysis (SFRFA) with respect to the *Fourth Memorandum Opinion and Order.* As required by the Regulatory Flexibility Act, the Commission has prepared the analysis of the possible impact on small entities of the rules set forth in this document. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this *Fourth Memorandum Opinion and Order,* including the SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

B. Paperwork Reduction Act

3. This *Fourth Memorandum Opinion and Order* does not contain any new or modified information collection. Therefore, it is not subject to the requirements for a paperwork reduction analysis, and the Commission has not performed one.

II. Supplemental Final Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Fourth Notice of Proposed Rule Making,* 65 FR 51788, August 25, 2000, of this proceeding. The Commission sought written public comment on the proposals in the *Fourth Notice of Proposed Rule Making,* including comment on the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was incorporated into the *Fourth Report and Order.* The present Supplemental Final Regulatory Flexibility Analysis (SFRFA) conforms to the RFA.

A. Need for, and Objectives of, the Fourth Memorandum Opinion and Order

5. Our objective is to promote the early and efficient use of public safety spectrum in the frequencies at 764–776 MHz and 794–806 MHz (the 700 MHz band). Specifically, this action will: promote spectrum efficiency through allowing secondary trunking on the Interoperability channels; promote efficient administration of the Interoperability channels by state or local entities; permit encryption on the Interoperability channels; and establish digital voice standards and efficiency standards for the Interoperability channels.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. No comments were submitted in response to the IRFA.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operations; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities.

8. *Public Safety Radio Pool Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. Spectrum in the 700 MHz band for public safety services is governed by 47 U.S.C. 337. Non-Federal governmental entities as well as private businesses are licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.

9. *Radio and Television Equipment Manufacturers.* We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities. We do not have information that indicates how many of the six radio equipment manufacturers associated with this proceeding are among these 778 firms. However, Motorola and Ericsson, two of the six manufacturers, are major, nationwide radio equipment manufacturers, and, thus, we conclude that these manufacturers would not qualify as small businesses.

10. *Television Stations.* This proceeding will affect full service TV station licensees (Channels 60–69), TV translator facilities, and low power TV (LPTV) stations. The SBA defines a TV broadcasting station that has no more than $10.5 million in annual receipts as a ''small business.'' TV broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by TV to the public, except cable and other pay TV services. Included in this industry are commercial, religious, educational, and other TV stations. Also included are establishments primarily engaged in TV broadcasting and which produce taped TV program materials. Separate establishments primarily engaged in producing taped TV program materials are classified under another NAICS Code.

11. There were 1,509 TV stations operating in the United States in 1992. That number has remained fairly constant as indicated by the approximately 1,551 operating TV broadcasting stations in the United States as of February 28, 1997. For 1992 the number of TV stations that produced less than $10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments. There are currently 95 full service analog TV stations, either operating or with approved construction permits on channels 60–69. In the DTV Proceeding, we adopted a DTV Table that provides only 15 allotments for DTV stations on

channels 60–69 in the continental United States. There are seven DTV allotments in channels 60–69 outside the continental United States. Thus, the rules will affect approximately 117 TV stations; approximately 90 of those stations may be considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-TV affiliated companies. We recognize that the rules may also impact minority-owned and women-owned stations, some of which may be small entities. In 2000, minorities owned and controlled 23 (1.9 percent) of 1,288 full power commercial TV stations in the United States. According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9 percent) of 1,342 commercial and non-commercial TV stations in the United States.

12. There are currently 4,977 TV translator stations and 1,952 LPTV stations. Approximately 1,309 low power TV and TV translator stations are on channels 60–69 which could be affected by policies in this proceeding. The Commission does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As indicated earlier, approximately 77 percent of TV stations are designated under this analysis as potentially small businesses. Given this, LPTV and TV translator stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

13. The *Fourth Memorandum Opinion and Order* does not adopt rules that will entail reporting, recordkeeping, and/or third-party consultation.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

14. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603.

15. The NCC, comprised of representatives from government, the public safety community, and the communications equipment manufacturing industry, was chartered by the FCC as a Federal Advisory Committee, effective February 25, 1999. The NCC made recommendations concerning various issues addressed in the *Fourth Notice of Proposed Rulemaking.* We note that in several instances, to benefit all entities, including small entities, we did not propose a particular recommendation.

16. In formulating the rules in the Fourth Memorandum Opinion and Order, we reduced economic burdens wherever possible. The regulatory burdens that we have adopted are necessary to ensure that the public receives the public safety benefits of innovative new services in a prompt and efficient manner. For example, we have adopted technical and operational rules that will promote competition in the equipment market. We believe that the rules must be as competitively and technologically neutral as possible, in order to allow for competing equipment designs and to avoid hindering future innovative technological developments. We note that tighter technical specifications generally allow more intense spectrum use, but may result in higher equipment costs. Conversely, although wider tolerances may allow manufacturers to use less costly component parts in transmitting equipment, they also may result in less efficient spectrum use. With these considerations in mind, we believe that the technical regulations we adopt herein provide a reasonable balance of these concerns.

17. Under the regional planning process, frequency coordination is competitive. Frequency coordination is the process by which a private organization recommends to the Commission the most appropriate frequencies for private land mobile radio service applicants. Frequency coordinators provide a valuable service to the Commission by eliminating common application errors, thereby improving the quality of the applications and resolving potential interference problems at the source. We continue to believe that the encouragement of competition among coordinators promotes cost-based pricing of coordination services and provides incentives for enhancing service quality. Therefore, we will continue to allow any of the certified public safety coordinators to provide coordination in the 700 MHz band.

18. Recognizing the budgetary constraints that public safety entities face as a matter of course, we have adopted rules that encourage broad-based efforts, such as projects on the state and regional level, to coordinate and consolidate operations that are critical to meeting the needs of public safety with cost effective, spectrally-efficient radio systems. For example, we have adopted permissive trunking on certain public safety channels in the 700 MHz band. Trunked systems provide service to many governmental entities in a specific geographic area and offer a higher degree of efficiency than some smaller, non-trunked systems. A difficulty in establishing these types of shared systems is that they require individual agencies to surrender some autonomy in return for the efficiencies and better coverage of a larger system. In addition, the funding required to develop the infrastructure necessary to support some of the newer technologies is often too great to permit small public safety agencies to participate in new, sophisticated, spectrum efficient, wireless radio systems. These same agencies, however, might be able to participate in a county-wide or state-wide system. For these, and other, reasons, we encourage the use of shared systems in the public safety community.

19. *Report to Congress:* The Commission will send a copy of the *Fourth Memorandum Opinion and Order,* including this SFRFA, in a report to be sent to Congress pursuant to the SBREFA, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Fourth Memorandum Opinion and Order* to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *Fourth Memorandum Opinion and Order* and SFRFA (or summaries thereof) will be published in the **Federal Register**. See 5 U.S.C. 604(b).

III. Ordering Clauses

20. Authority for the issuance of this *Fourth Memorandum Opinion and Order* is contained in sections 4(i), 4(j), 7(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 157(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), 332(c).

21. This *Fourth Memorandum Opinion and Order* will be effective October 28, 2002.

22. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *Fourth Memorandum Opinion and Order,* including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

23. Pursuant to section 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 405, and § 1.429(i) of the Commission's rules, 47 CFR 1.429(i), that the petitions for reconsideration, clarification, and/or a declaratory ruling filed by Motorola, the North America TETRA Forum, Sergeant John S. Powell, the Public Safety Wireless Network, Com-Net Ericsson Critical Radio Systems, Inc. *are granted* to the extent indicated herein and otherwise *are denied.*

List of Subjects in 47 CFR Part 90

Communications equipment, Incorporation by reference, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

Part 90 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.531 is amended by revising paragraphs (b)(1)(iii), (b)(2), (b)(7), (c)(1), (d) introductory text, (d)(1), and (2) to read as follows:

§ 90.531 Band plan.

* * * * *

(b) * * *

(1) * * *

(iii) *Narrowband trunking Interoperability channels.* The following Interoperability channel pairs may be combined with the appropriate adjacent secondary trunking channel pairs and used in trunked mode on a secondary basis to conventional Interoperability operations: 23/983, 24/984, 103/1063, 104/1064, 183/1143, 184/1144, 263/1223, 264/1224, 657/1617, 658/1618, 737/1697, 738/1698, 817/1777, 818/1778, 897/1857, 898/1858. For every ten general use channels trunked at a station, entities may obtain a license to operate in the trunked mode on two of the above contiguous Interoperability channel pairs. The maximum number of Interoperability channel pairs that can be trunked at any one location is eight.

* * * * *

(2) Narrowband reserve channels. The following narrowband channels are undesignated and reserved: 37, 38, 61, 62, 77, 78, 117, 118, 141, 142, 157, 158, 197, 198, 221, 222, 237, 238, 277, 278, 301, 302, 317, 318, 643, 644, 683, 684, 699, 700, 723, 724, 763, 764, 779, 780, 803, 804, 843, 844, 859, 860, 883, 884, 923, 924, 939, 940, 997, 998, 1021, 1022, 1037, 1038, 1077, 1078, 1101, 1102, 1117, 1118, 1157, 1158, 1181, 1182, 1197, 1198, 1237, 1238, 1261, 1262, 1277, 1278, 1603, 1604, 1643, 1644, 1659, 1660, 1683, 1684, 1723, 1724, 1739, 1740, 1763, 1764, 1803, 1804, 1819, 1820, 1843, 1844, 1883, 1884, 1899, 1900.

* * * * *

(7) *Secondary trunking channels.* The following channel pairs are reserved for secondary trunking operations: 21/981, 22/982, 101/1061, 102/1062, 181/1141, 182/1142, 261/1221, 262/1222, 659/1619, 660/1620, 739/1699, 740/1700, 819/1779, 820/1780, 899/1859, and 900/1860. They may be used only in combination with the appropriate adjacent Interoperability channel pairs specified in paragraph (b)(1)(iii) of this section in trunked systems.

(c) * * *

(1) *Wideband Interoperability channels.* The following wideband channels are designated for nationwide Interoperability licensing and use, but are not available for licensing or use pending Commission adoption of a wideband Interoperability standard: 28–30, 37–39, 46–48, 73–75, 82–84, 91–93, 148–150, 157–159, 166–168, 193–195, 202–204, 211–213.

* * * * *

(d) *Combining channels.* Except as noted in this section, at the discretion of the appropriate regional planning committee, contiguous channels may be used in combination in order to accommodate requirements for larger bandwidth emissions, in accordance with this paragraph. Interoperability channels may not be combined with channels in another group except for channels for secondary trunking channels.

(1) *Narrowband.* Two or four contiguous narrowband (6.25 kHz) channels may be used in combination as 12.5 kHz or 25 kHz channels, respectively. The lower (in frequency) channel for two channel combinations must be an odd (*i.e.*, 1, 3, 5 * * *) numbered channel. The lowest (in frequency) channel for four channel combinations must be a channel whose number is equal to 1+(4xn), where n = any integer between 0 and 479, inclusive (*e.g.*, channel number 1, 5, * * * 1917). Channel combinations are designated by the lowest and highest channel numbers separated by a hyphen, *e.g.*, ''1–2'' for a two channel combination and ''1–4'' for a four channel combination.

(2) *Wideband.* Two or three contiguous wideband (50 kHz) channels may be used in combination as 100 kHz or 150 kHz channels, respectively. The lower (in frequency) channel for two channel combinations must be a channel whose number is equal to 1+(3xn) or 2+(3xn), where n = any integer between 0 and 79, inclusive (*e.g.*, channel number 1, 2, 4, 5, 7, 8, * * * 238, 239). The lowest (in frequency) channel for three channel combinations must be a channel whose number is equal to 1+(3xn), where n = any integer between 0 and 79, inclusive (*e.g.*, channel number 1, 4, 7, 10, * * * 238). Channel combinations are designated by the lowest and highest channel numbers separated by a hyphen, *e.g.*, ''1–2'' for a two channel combination and ''1–3'' for a three channel combination.

* * * * *

3. Section 90.547 is revised to read as follows:

§ 90.547 Narrowband Interoperability channel capability requirement.

(a) Except as noted in this section, mobile and portable transmitters operating on narrowband channels in the 764–776 MHz and 794–806 MHz frequency bands must be capable of operating on all of the designated nationwide narrowband Interoperability channels pursuant to the standards specified in this part.

(1) Mobile and portable transmitters that are designed to operate only on the Low Power Channels specified in § 90.531 (b)(3) and (4) are exempt from this Interoperability channel requirement.

(2) Mobile and portable transmitters that are designed to operate only in the data mode must be capable of operation on the data Interoperability channels specified in § 90.531(b)(1)(i); but need not be capable of voice operation on other Interoperability channels.

(3) Mobile and portable transmitters that are designed to operate only in the voice mode do not have to operate on the data Interoperability channels specified in § 90.531(b)(1)(i).

(b) Mobile and portable transmitters designed for data are not required to be voice capable, and vice versa.

4. Section 90.548 is revised to read as follows:

§ 90.548 Interoperability Technical Standards.

(a) Transmitters operating on those narrowband channels in the 764–776 and 794–806 MHz band designated for interoperability (See 90.531) shall conform to the following technical standards:

(1) Transmitters designed for voice operation shall include a 12.5 kHz bandwidth mode of operation conforming to the following standards, which are incorporated by reference: Project 25 FDMA Common Air Interface—New Technology Standards Project—Digital Radio Technical Standards, approved April 15, 1998, Telecommunications Industry Association, ANSI/TIA/EIA–102.BAAA–1998; Project 25 Vocoder Description, approved May 5, 1998, Telecommunications Industry Association, ANSI/TIA/EIA–102.BABA–1998.

(2) Transmitters designed for data transmission shall include a 12.5 kHz bandwidth mode of operation conforming to the following standards, which are incorporated by reference: Project 25 Data Overview—New Technology Standards Project—Digital Radio Technical Standards, approved March 3, 2000, Telecommunications Industry Association, ANSI/TIA/EIA–102.BAEA–2000; Project 25 Packet Data Specification—New Technology Standards Project—Digital Radio Technical Standards, approved March 3, 2000, Telecommunications Industry Association, ANSI/TIA/EIA–102.BAEB–2000; Project 25 Radio Control Protocol (RCP)—New Technology Standards Project—Digital Radio Technical Standards, approved March 3, 2000, Telecommunications Industry Association, ANSI/TIA/EIA–102.BAEE–2000; Project 25 FDMA Common Air Interface—New Technology Standards Project—Digital Radio Technical Standards, approved April 15, 1998, Telecommunications Industry Association, ANSI/TIA/EIA–102.BAAA–1998.

(b) The Director of the Federal Register approves these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the standards listed in this section that are incorporated by reference may be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The standards can also be purchased from TIA/EIA, 2500 Wilson Boulevard, Arlington, VA, 22201; Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112; or the American National Standards Institute, 25 West 43rd Street, Fourth Floor, New York, NY 10036 (or via the Internet at *www.ansi.org.*)

5. Section 90.553 is amended by revising paragraphs (b) and (c) to read as follows:

§ 90.553 Encryption.

* * * * *

(b) If Encryption is employed then the following encryption protocol must be used: Project 25 DES Encryption Protocol, approved January 23, 2001, Telecommunications Industry Association, ANSI/TIA/EIA–102.AAAA–A–2001.

(c) The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the standard listed in this section that are incorporated by reference may be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The standard can also be purchased from TIA/EIA, 2500 Wilson Boulevard, Arlington, VA, 22201; Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112; or the American National Standards Institute, 25 West 43rd Street, Fourth Floor, New York, NY 10036 (or via the Internet at *www.ansi.org.*)

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 105, 107, 130, 171, 172, 173, 175, 176, 177, 178, 179 and 180

[Docket No. RSPA–02–12524 (HM–189T)]

RIN 2137–AD72

Hazardous Materials Regulations: Minor Editorial Corrections and Clarifications

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule corrects editorial errors, makes minor regulatory changes, and, in response to requests for clarification, improves the clarity of certain provisions in the Hazardous Materials Regulations (HMR). The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are minor editorial changes and do not impose new requirements.

DATES: Effective date: September 27, 2002. *Incorporation by reference date:* The incorporation by reference of certain publications listed in these amendments is approved by the Director of the Federal Register as of September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Eileen Edmonson, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

RSPA (we, us) annually reviews the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to identify errors that may confuse readers. Inaccuracies corrected in this final rule include typographical and printing errors, incorrect references to other rules and regulations in the CFR, inconsistent use of terminology, and misstatements of certain regulatory requirements. In addition, we are making certain other changes to improve the clarity of certain HMR requirements.

Because these amendments do not impose new requirements, notice and public procedure are unnecessary. In addition, making these amendments effective without the customary 30-day delay following publication will allow the changes to appear in the next revision of 49 CFR.

The following is a section-by-section summary of the major amendments made under this final rule. It does not discuss all minor editorial corrections (*e.g.*, typographical, capitalization and punctuation errors), changes to legal authority citations, and certain other minor adjustments to enhance the clarity of the HMR.

II. Summary of Regulatory Changes

Part 105, Subpart B, Table of Contents

We adopted Part 105 containing general procedures on how to obtain various hazardous material-related public documents in a final rule published on June 25, 2002 (Docket No. RSPA–98–3974, 67 FR 42948). In this final rule, we are correcting the table of contents' heading for § 105.15 for consistency with the heading appearing in that section.

Section 105.25

We are revising the first sentence in paragraph (a)(2) to reflect a reference point by exemption number instead of by a cut-off date for locations where exemption documents are available for public review. Also we are removing paragraph (b) and redesignating paragraph (c) as paragraph (b). We are making this amendment because the lower numbered exemption documents are being relocated from the Hazardous Materials Records Center to the Office of Hazardous Materials Exemptions and Approvals. The new location for these documents is identified in new paragraph (b)(2)(iv).

Sections 107.105, 107.107 and 107.109

We are revising §§ 107.105(a)(1), 107.107(b)(1) and 107.109(a)(1) to permit a person applying for an exemption, party-to status to an application or existing exemption, or an exemption renewal to submit the application to us by facsimile or electronic mail. This change will expedite the transmission of documents and reduce the costs associated with the handling and mailing of paper copies.

Section 107.117

We are revising paragraph (d)(3) to reflect the new title, address, and daytime telephone number of the contact person at the Federal Motor Carrier Safety Administration. We are revising the night telephone number in paragraphs (d)(3), (d)(4), and (d)(5) to reflect a toll-free night number managed by the National Response Center. Also, we are revising paragraph (d)(4) to replace an obsolete daytime telephone number.

Section 107.127

We are revising paragraph (a) to change the office name and room number where persons may view certain public documents.

Sections 107.305 and 107.321

We are revising these sections to correct outdated references to former § 107.13. This section was removed under Docket No. RSPA–98–3974.

Sections 107.402 and 107.502

We are revising these sections to permit a person filing for designation as an approval or certification agency, or filing a registration statement, to submit the application to us by facsimile or electronic mail. This change will expedite the transmission of documents and reduce the costs inherent with the handling and mailing of paper copies.

Section 107.705

We are revising paragraph (a)(1) of this section to permit a person filing an approval application to submit it to us by facsimile or electronic mail. This change will expedite the transmission of documents and reduce the costs inherent with the handling and mailing of paper copies.

Part 107

In addition, we are revising several sections in Part 107 to correct outdated references to former §§ 107.5 and 107.7. These sections were removed under Docket No. RSPA–98–3974.

Section 130.5

We are revising the Note following the definition of ''Liquid'' to add a zip code and change the office name and room number where persons may view certain public documents.

Section 171.6

We are revising the table in paragraph (b)(2) to update the affected sections for OMB control numbers 2137–0018 and 2137–0051.

Section 171.7

We are revising paragraph (a)(2)(i) to change the office name and room number where persons may view certain public documents.

In paragraph (a)(3), we are updating the incorporation by reference of the American National Standards Institute, Inc.''s (ANSI) publication, ''Standard for Packaging of Uranium Hexafluoride for Transport,'' to include the 1995 and 2001 editions. Current § 173.420 of the HMR permits uranium hexafluoride to be transported in packagings designed, fabricated, inspected, tested and marked according to the ANSI N14.1 1990, 1987, 1982, or 1971 edition in effect at the time the packaging was manufactured. The 1995 edition discontinues a marking requirement in the 1990 edition that the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code be stamped on 1S and 2S uranium hexafluoride cylinders. The 2001 edition corrects an inconsistency concerning the package marking size on the 30B and 48-inch uranium hexafluoride cylinders. We are also revising the entry to correct the address for ANSI.

Under ''American Society of Mechanical Engineers'' (ASME), we are revising the entry to correct the address for ASME.

Under ''American Society for Testing and Materials,'' the title of the entry ''ASTM B 580–79'' is revised to correctly state the specifications are for ''anodic'' oxide coatings on aluminum, and the standard was re-approved in 2000.

Under ''International Atomic Energy Agency'' (IAEA), we are correcting the format of the address for IAEA and the title for ''Safety Series No. 6'' by revising the word ''Materials'' to read ''Material'' and removing the wording ''Including 1985 Edition (Supplemented 1986 and 1988).'' The safety series was amended in 1990. We are also correcting the entry for the ''IAEA Regulations for the Safe Transport of Radioactive Material,'' and the addresses where copies of this document may be obtained.

Under ''International Organization for Standardization'' (ISO), we are correcting the addresses where copies of the ISO documents may be obtained.

Section 171.8

We are making minor editorial corrections to the definitions for the acronyms ''Psi'', ''Psia'', and ''Psig'.

Section 171.12

We are updating paragraph (d) to remove the dates following the references to the two IAEA standards because the applicable editions are listed in § 171.7.

Section 172.101

We are adding a new paragraph (j)(5). Paragraph (j) explains how to apply the quantity limitations in Columns 9A and 9B of the Hazardous Materials Table (HMT) for hazardous materials intended for transportation by aircraft or passenger rail car. The new paragraph (j)(5) alerts persons to the additional general requirements in § 173.24a(c)(1)(iv) that prescribe total net quantity limitations for outer non-bulk packagings containing more than one hazardous material when offered for transportation by aircraft.

In Column 2 of the HMT, the entry ''Octafluorocyclobutane *or* Refrigerant gas'' is revised to correct the ''RC'' number to ''318''.

In Column 6 of the HMT, the compatibility group letter ''C'' is added to the label code to read ''1.2C'' for the entry ''Rockets, with inert head,'' UN 0502. This letter was omitted in error when the entry was added to the HMT in a final rule published on April 3, 2002, under Docket No. RSPA–2000–7702 (HM–215D) (67 FR 15736).

In Column 7 of the HMT, Special provision 25 containing an expired compliance date is removed in each shipping description entry it appears.

In Column 10B of the HMT, the entry ''Polymeric beads, expandable *evolving flammable vapor*'', is corrected by

adding ''85, 87.'' These numbers were removed in error in a final rule published on April 3, 2002, under Docket No. RSPA–2000–7702 (HM–215D) (67 FR 15736).

Section 172.102

In paragraph (c)(1), Special provision 25 containing an expired compliance date is removed. Paragraph (c)(4) is revised to clarify that the letter ''Z'' shown in the marking code in Table 1 for composite intermediate bulk containers (IBCs) must be replaced with the IBC code letter as designated in § 178.707(a)(2) and listed in § 178.702(a)(2).

Section 172.203

In paragraph (k), the technical name ''Caprylyl chloride'' is revised to read ''Octanoyl chloride'' because it is a more-recognized synonym for the material.

Sections 172.407

We are revising paragraph (d)(4)(ii) to change the office name and room number where persons may view certain public documents.

Section 173.4

In paragraph (a)(1)(ii), we are removing the wording, other than Division 6.1, Packing Group I, ''Hazard Zone A or B'' to clarify that hazard zones do not apply to solids. *See* the definition for ''Hazard Zone'' in § 171.8.

Section 173.10

In paragraph (e), Note 2, we are replacing the word ''injury'' with the word ''damage'' for clarity.

Section 173.21

In paragraph (k), we are removing an obsolete reference to § 175.10(a)(24) that was removed in a final rule published on August 19, 1999, under Docket No. HM–224A (64 FR 45388).

Section 173.54

In paragraph (f), we are revising the reference to ''14 CFR 108.11'' to read ''49 CFR 1544.219''. Part 108 of 14 CFR was removed in a final rule published on February 22, 2002 (67 FR 8340) and issued jointly by the Federal Aviation Administration (FAA) and Transportation Security Administration. The requirements in former 14 CFR 108.11 were revised and placed in new section 49 CFR 1544.219.

Section 173.115

In paragraph (j), we are correcting the reference to ''§ 173.315(a)(1)'' to read ''§ 173.315(a)'.

Section 173.150

In paragraph (e)(1), we are removing the semicolon and the word ''and'' at the end of the sentence and adding a period. The provisions in paragraphs (e)(1) and (e)(2) are independently mutual.

Section 173.225

In paragraph (b)(3), we are adding a sentence at the end of the paragraph to alert shippers of organic peroxides that qualify for more than one generic listing, depending on concentration, of a requirement in § 172.203. Section 172.203(k), introductory text, requires on the shipping paper, as part of the technical name, the actual concentration of the organic peroxide being shipped or the concentration range for its appropriate generic listing.

Section 173.247

We are revising the section heading to clarify that elevated temperature materials in other than Class 9 (miscellaneous) and Class 3 (flammable liquid) are referred to this section by the HMT.

Section 173.305

In paragraph (c)(1), we are replacing the word ''injury'' with the word ''damage'' for clarity.

Section 173.315

The second sentence in paragraph (i)(1)(iv) referencing the Bureau of Explosives is removed. In paragraph (j)(3), we are replacing the word ''injury'' with the word ''damage'' for clarity.

Section 173.320

In paragraph (c), the reference to ''P202'' in the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods is corrected to read ''202''.

Section 173.334

In paragraph (f), we are replacing the word ''injury'' with the word ''damage'' for clarity.

Section 173.337

In paragraphs (a) and (b), we are replacing the word ''injury'' with the word ''damage'' for clarity.

Section 173.420

We are updating paragraph (a)(2)(i) to provide for uranium hexafluoride packagings fabricated to the latest ANSI standards, as stated earlier in the preamble discussion to § 171.7.

Section 173.471, 173.472, 173.473 and 173.476

We are revising these sections to permit a person filing an application for a competent authority approval covered by these sections, or requesting to register as a user of a competent authority certificate, to submit the application or request to us by facsimile or electronic mail. This change will expedite the transmission of documents and reduce the costs inherent with the handling and mailing of paper copies.

Section 175.10

In paragraph (a)(5), the reference to ''14 CFR 108.11(a) and (b)'' is revised to read ''49 CFR 1544.219'', as stated earlier in the preamble discussion to § 173.54.

Section 175.320

In paragraph (b)(5), we are removing the reference to 14 CFR part 127 and adding a reference to 14 CFR part 133. FAA removed part 127 in a final rule published December 20, 1995 (60 FR 65832). In the preamble discussion of that rule, FAA stated that all rotorcraft operators regardless of size must comply with Part 133 and external-load operators must comply with Part 135, which is already referenced in the section. (60 FR 65882.)

Section 176.2

In the definition for ''INF cargo,'' we are removing the wording ''2000 edition'' following the reference to the International Maritime Dangerous Goods (IMDG) Code because it is the only edition incorporated by reference in § 171.7.

Section 176.128.

Paragraph (c) is revised editorially for clarity.

Section 176.340

In paragraph (b)(9), the wording ''§ 173.32(e)(2), (3), and (4)'' is corrected to read ''§ 180.605''. The portable tank requirements in former § 173.32(e)(2), (3), and (4) were revised and moved to § 180.605 in a final rule published on June 21, 2001, under Docket No. RSPA–2000–7702 (HM–215D) (66 FR 33316).

In paragraph (b)(10), the wording ''paragraphs (g), (h), (i), and (k) of § 173.32'' is corrected to read ''§ 180.605(b) and (j)''. These revisions were also made in the HM–215D final rule.

Section 177.840

We are revising paragraph (l) to clarify that this requirement applies only to cargo tank motor vehicles equipped with emergency discharge control

equipment in conformance with § 173.315(n). We adopted paragraph (l) in a final rule published under Docket No. RSPA–97–2718 (HM–225A, May 24, 1999; 64 FR 28030). The HM–225A final rule requires cargo tanks transporting certain liquefied compressed gases to be equipped with emergency discharge control equipment that will operate in the event of an accident or emergency during the unloading process. The emergency discharge control requirement is specified in § 173.315(n) of the HMR. The table in § 173.315(n)(1) specifies that Division 2.2 materials with no subsidiary hazard (excluding anhydrous ammonia) are not required to have an emergency discharge control capability. Section 177.840(l) was intended to apply to cargo tank motor vehicles equipped with emergency discharge control equipment in conformance with § 173.315(n). As currently written, however, paragraph (l) appears to apply to all cargo tank motor vehicles transporting any liquefied compressed gas.

Section 178.3

In paragraphs (b) introductory text and (b)(1), we are removing the reference to ''Annex 1'' of the IMDG Code because it is included in the edition incorporated by reference in § 171.7.

Section 178.51

In paragraph (f)(1)(i), the reference to ''table I'' is corrected to read ''table 1''.

Section 178.58

Paragraph (k)(2)(ii) is revised editorially for clarity.

Section 178.61

In paragraph (b)(1), the reference ''table I'' is corrected to read ''table 1''. In paragraph (b)(2), the reference to ''paragraph (f)(1)'' is corrected to read ''paragraph (f)(4)'.

Section 178.270–11

In paragraph (d)(3), the reference to ''§ 173.32a of this subchapter'' is revised to read ''§ 178.273(b)(7)''. The requirements in former § 173.32a concerning the application for approval of specification IM portable tanks were revised and moved to § 178.273(b)(7) in the final rule published on June 21, 2001, under Docket No. RSPA–2000–7702 (HM–215D) (66 FR 33316).

Section 178.273

In paragraph (b)(8)(ii), the reference to ''§ 180.605 of this subchapter'' is revised to correctly reference the initial inspection and test requirements for portable tanks in § 178.274(j).

Section 178.354–3

The example in paragraph (a) referring to DOT 6C and 17C packagings is removed.

Section 178.362–1

In paragraph (b)(6), the maximum gross weight, in kilograms, of the jacket for a DOT 20WC–6 cylinder is corrected to read 2730 kilograms (6,000 pounds).

Section 178.503

In paragraph (e)(3), in the last sentence, the parenthetical text ''(as in § 178.503 (c)(1), (2), (3), (4), and (5))'' is revised to read ''(as in § 178.503(c)(1))''. The requirements in paragraphs (c)(1) through (c)(5) were combined into paragraph (c)(1) in a final rule published on December 29, 1994, under Docket No. HM–215A (59 FR 67390).

Section 178.603

We are revising the introductory text to paragraph (e) to clarify a provision stated in § 178.601(a), that the test procedures described in 49 CFR Subpart M are minimum requirements. When the final rule incorporating the performance test requirements was published on December 21, 1990, under Docket Nos. HM–181, HM–181A, HM–181B, HM–181C, HM–181D, and HM–204 (55 FR 52402), RSPA accepted as a given that packagings capable of passing these tests would also survive normal transportation conditions. Therefore, RSPA expects that a package that has been successfully drop tested at a height higher than is prescribed for its packing group need not be retested at the minimum drop height to be marked to its packing group performance level. However, for the test to be valid, each package must strike its intended target in the proper orientation prescribed in § 178.603(a), and pass the other prescribed design type tests for which it is certified and marked.

Section 178.707

We are revising paragraph (a) and removing paragraphs (a)(1) and (a)(2) to clarify that the letter ''Z'' appearing in the marking code for composite IBCs in this section must be replaced by a letter representing the material used for the outer packaging.

Section 179.201–2

We are revising the table in paragraph (a) to correct a printing error and to display the numerical reference to the footnote in the table and following the table in a more distinguishable manner.

Section 179.500–10

In paragraph (a), we are replacing the word ''injury'' with the word ''damage'' for clarity.

Section 180.417

In paragraph (c)(2), the reference ''Director, Regional Office of Motor Carrier Safety, Federal Highway Administration'' is revised to read ''Field Administrator, Regional Service Center, Federal Motor Carrier Safety Administration.''

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 (''Federalism''). This final rule does not propose any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law.

RSPA is not aware of any State, local, or Indian tribe requirements that would be preempted by correcting editorial errors and making minor regulatory changes. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

C. Executive Order 13175

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses or other organizations.

E. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

F. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 105

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 130

Oil, Response Plans, Reporting and recordkeeping requirements, Transportation.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES

1. The authority citation for part 105 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. Amend Part 105, in the table of contents under Subpart B by revising the heading for § 105.15 to read as follows:

* * * * *

Subpart B—General Procedures

105.15 Defined terms used in this subpart.

* * * * *

3. Amend § 105.25 by:

a. revising the first sentence in paragraph (a)(2);

b. removing paragraph (b) and redesignating paragraph (c) as paragraph (b);

c. redesignating newly redesignated paragraph (b)(2)(iv) as paragraph (b)(2)(v); and

d. adding a new paragraph (b)(2)(iv).

The revisions and additions read as follows:

§ 105.25 Reviewing public documents.

* * * * *

(a) * * *

(2) Applications for exemption numbered DOT–E 11832 and above.

* * *

* * * * *

(b) * * *

(2) * * *

(iv) Applications for exemptions numbered below DOT–E 11832 and related background information are available for public review and copying at the Office of Hazardous Materials Safety, Office of Hazardous Materials Exemptions and Approvals, U.S. Department of Transportation, Room 8100, 400 7th Street, SW., Washington, DC 20590–0001.

* * * * *

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

4. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

5. Amend § 107.105 by revising paragraph (a)(1) to read as follows:

§ 107.105 Application for exemption.

(a) * * *

(1) Be submitted for timely consideration, at least 120 days before the requested effective date, in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Exemptions, DHM–31), Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. Alternatively, the application with any attached supporting documentation submitted in an appropriate format may be sent by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (e-mail) to: *Exemptions@rspa.dot.gov;*

* * * * *

6. Amend § 107.107 by revising paragraph (b)(1) to read as follows:

§ 107.107 Application for party status.

* * * * *

(b) * * *

(1) Be submitted in duplicate to: Associate Administrator for Hazardous

Materials Safety (Attention: Exemptions, DHM–31), Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW, Washington, DC 20590–0001. Alternatively, the application with any attached supporting documentation submitted in an appropriate format may be sent by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (e-mail) to: *Exemptions@rspa.dot.gov;*

* * * * *

7. Amend § 107.109 by revising paragraph (a)(1) to read as follows:

§ 107.109 Application for renewal.

(a) * * *

(1) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Exemptions, DHM–31), Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW, Washington, DC 20590–0001. Alternatively, the application with any attached supporting documentation submitted in an appropriate format may be sent by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (e-mail) to: *Exemptions@rspa.dot.gov;*

* * * * *

8. Amend § 107.117, by revising paragraphs (d)(3), (d)(4), and (d)(5) to read as follows:

§ 107.117 Emergency processing.

* * * * *

(d) * * *

(3) *Motor Vehicle Transportation:* Chief, Hazardous Materials Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, Washington, DC 20590–0001, 202–366–6121 (day); 1–800–424–8802 (night).

(4) *Rail Transportation:* Staff Director, Hazardous Materials Division, Office of Safety Assurance and Compliance, Federal Railroad Administration, U.S. Department of Transportation, Washington, DC 20590–0001, 202–493–6248 or 202–493–6244 (day); 1–800–424–8802 (night).

(5) *Water Transportation:* Chief, Hazardous Materials Standards Division, Office of Operating and Environmental Standards, United States Coast Guard, U.S. Department of Transportation, Washington, DC 20593–0001, 202–267–1577 (day); 1–800–424–8802 (night).

* * * * *

§ 107.127 [Amended]

9. In § 107.127(a), in the first sentence, the following amendments are made:

a. The wording ''RSPA Records Center'' is removed and the wording ''Office of Hazardous Materials Exemptions and Approvals'' is added in its place.

b. The wording ''Room 8421'' is removed and the wording ''Room 8100'' is added in its place.

§ 107.305 [Amended]

10. Amend § 107.305 by:

a. In paragraph (a), removing the reference ''§ 107.13'' and adding the reference ''§ 105.45'' in its place.

b. In paragraph (b)(4), removing the reference ''§ 107.13(c) and (d)'' and adding the reference ''§ 105.50'' in its place.

c. In paragraph (b)(4), removing the reference ''§ 107.13(h)'' and adding the reference ''§ 105.55(a)'' in its place.

d. In paragraph (b)(4), removing the reference ''§ 107.13(i)'' and adding the reference ''§ 105.55(b)'' in its place.

§ 107.321 [Amended]

11. Amend § 107.321(b)(2) by removing the reference ''§ 107.13'' and adding the reference ''§ 105.45'' in its place.

12. Amend § 107.402 by removing the first sentence in paragraph (a) and adding two sentences in its place to read as follows:

§ 107.402 Application for designation as an approval or certification agency.

(a) Any organization or person seeking designation as an approval or certification agency shall apply in writing to the Associate Administrator for Hazardous Materials Safety (DHM–32), Department of Transportation, 400 Seventh Street, SW., Washington DC 20590–0001. Alternatively, the application with any attached supporting documentation in an appropriate format may be submitted by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (e-mail) to: *Approvals@rspa.dot.gov.* * * *

* * * * *

13. Amend § 107.502 by revising paragraph (d) to read as follows:

§ 107.502 General registration requirements.

* * * * *

(d) Registration statements must be in English, contain all of the information required by this subpart, and be submitted to: Approvals Branch (Attn.: DHM–32), Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590–0001. Alternatively, a statement with any attached supporting documentation in an appropriate format may be submitted by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (e-mail) to: *Approvals@rspa.dot.gov.*

§ 107.601 [Amended]

14. Amend § 107.601(a)(2) by removing the wording ''Division 1.1,1.2.or 1.3'' and adding the wording ''Division 1.1, 1.2, or 1.3'' in its place.

15. Amend § 107.705 by revising paragraph (a)(1) to read as follows:

§ 107.705 Registrations, reports, and applications for approval.

(a) * * *

(1) File the registration, report, or application with the Associate Administrator for Hazardous Materials Safety (Attention: Approvals, DHM–32), Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. Alternatively, the document with any attached supporting documentation in an appropriate format may be filed by facsimile (fax) to: (202) 366–3753 or (202) 366–3308 or by electronic mail (e-mail) to: *Approvals@rspa.dot.gov.*

PART 107 [Amended]

16. Amend 49 CFR Part 107 by removing the reference ''§ 107.5'' and adding ''§ 105.30'' each place it appears in the following sections:

a. 107.105(b)
b. 107.111
c. 107.127(b)
d. 107.705(d)
e. 107.711

17. Amend 49 CFR Part 107 by removing the reference ''§ 107.7'' and adding ''§ 105.40'' each place it appears in the following sections:

a. 107.105(a)(3)
b. 107.107(b)(4)
c. 107.402(b)(1)
d. 107.503(a)(7)
e. 107.608(e)
f. 107.705(a)(5)

PART 130—OIL SPILL PREVENTION AND RESPONSE PLANS

18. The authority citation for part 130 continues to read as follows:

Authority: 33 U.S.C. 1321.

19. Amend § 130.5, by revising the last sentence of the Note following the definition of ''Liquid'' to read as follows:

§ 130.5 Definitions.

* * * * *

Liquid * * *

Note: * * * Copies may be inspected at the Office of Hazardous Materials Safety, Office

of Hazardous Materials Standards, Room 8422, DOT headquarters building, 400 7th St., SW, Washington, DC 20590, or at the Office of the Federal Register, 800 North Capitol St., NW, Room 700, Washington, DC 20002.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

20. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.6 [Amended]

21. Amend § 171.6 (b)(2) by:

a. In the entry for Current OMB control No. ''2137–0018'', in column 3, removing the commas and section citations ''173.32a, 173.32b,'' and adding the section citations ''178.273, 178.274'' and ''180.605'' in numerical order.

b. In the entry for Current OMB control No. ''2137–0051'', in column 3, removing the commas and section citations ''106.31, 106.35, 106.38, 107.5, 107.7,'' and adding the section citations ''105.30, 105.40'' and ''106.95, 106.110'' in numerical order.

22. Amend § 171.7 by:

a. Revising paragraph (a)(2)(i).

b. In the table in paragraph (a)(3), under ''American National Standards Institute, Inc.'', revising the address and the entry ANSI N14.1.

c. In the table in paragraph (a)(3), under ''American Society of Mechanical Engineers'', revising the address.

d. In the table in paragraph (a)(3), under ''American Society for Testing and Materials'', revising the entry ASTM B 580–79.

e. In the table in paragraph (a)(3), revising the entry for the ''International Atomic Energy Agency''.

f. In the table in paragraph (a)(3), under ''International Organization for Standardization'', revising the address for ANSI.

The revisions read as follows:

§ 171.7 Reference material.

(a) * * *

(2) * * *

(i) The Office of Hazardous Materials Safety, Office of Hazardous Materials Standards, Room 8422, NASSIF Building, 400 7th Street, SW., Washington, DC 20590; and

* * * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
American National Standards Institute, Inc.: 25 West 43rd Street, New York, NY 10036	
* * * * * * *	
ANSI N14.1 Uranium Hexafluoride—Packaging for Transport, 1971, 1982, 1987, 1990, 1995 and 2001 Editions.	173.417; 173.420
* * * * * * *	
American Society of Mechanical Engineers: ASME International, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007–2900	
* * * * * * *	
American Society for Testing and Materials	
* * * * * * *	
ASTM B 580–79 Standard Specification for Anodic Oxide Coatings on Aluminum, (Re-approved 2000)	173.316; 173.318; 178.338–17
* * * * * * *	
International Atomic Energy Agency (IAEA): P.O. Box 100, Wagramer Strasse 5, A–1400 Vienna, Austria Also available from: Bernan Associates, 4611–F Assembly Drive, Lanham, MD 20706–4391, USA; or Renouf Publishing Company, Ltd., 812 Proctor Avenue, Ogdensburg, New York 13669, USA	
IAEA, Regulations for the Safe Transport of Radioactive Material, No. TS–R–1, 1996 Edition (Revised), (ST–1, Revised).	171.12
IAEA, Regulations for the Safe Transport of Radioactive Material, Safety Series No. 6, 1985 Edition (as Amended 1990)	171.12; 173.415; 173.416; 173.417; 173.473
* * * * * * *	
International Organization for Standardization: Case Postale 56, CH–1211, Geneve 20, Switzerland Also available from: ANSI 25 West 43rd Street, New York, NY 10036	
* * * * * * *	

23. Amend § 171.8 by:

a. Revising the definitions for ''Psi'', ''Psia'', and ''Psig''.

b. In the definition for ''Registered Inspector'', revising paragraph (3).

c. Placing the definition for ''Stabilized'' following ''Specification Packaging'' in alphabetical order.

The revisions read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Psi means pounds per square inch.

Psia means pounds per square inch absolute.

Psig means pounds per square inch gauge.

* * * * *

Registered Inspector * * *

(3) Has a high school diploma (or General Equivalency Diploma) and three years of work experience.

* * * * *

§ 171.11 [Amended]

24. Amend § 171.11 introductory text by removing the wording ''ICAO Technical Instructions'' and adding the wording ''ICAO Technical Instructions (incorporated by reference, see § 171.7)'' in its place.

§ 171.12 [Amended]

25. Amend § 171.12(d) introductory text by removing the wording ''Safety Series No. 6, 1985 edition, or TS–R–1,

1996 edition (incorporated by reference, see § 171.7) ,'' and adding the commas and wording ''Safety Series No. 6 or TS–R–1 (incorporated by reference, see § 171.7),'' in its place.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

26. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

27. Amend § 172.101 by adding paragraph (j)(5) to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(j) * * *

(5) The total net quantity of hazardous material for an outer non-bulk packaging that contains more than one hazardous material may not exceed the lowest permitted maximum net quantity per package as shown in Column 9A or 9B, as appropriate. If one material is a liquid and one is a solid, the maximum net quantity must be calculated in kilograms. *See* § 173.24a(c)(1)(iv).

§ 172.101 [Amended]

28. Amend § 172.101, in the Hazardous Materials Table by:

a. Removing special provision ''25,'', in column 7, for the following entries: ''Hydrogen cyanide, solution in alcohol *with not more than 45 percent hydrogen cyanide*'', UN 3294; ''Methanesulfonyl chloride'', UN 3246; and ''Methyl vinyl ketone, stabilized'', UN 1251.

b. Removing ''RC 1318'', in column 2, from the entry ''Octafluorocyclobutane or Refrigerant gas'', UN 1976, and adding ''RC 318'' in its place.

c. Adding ''85, 87'', in column 10B, for the entry ''Polymeric beads, expandable *evolving flammable vapor*'', UN 2211.

d. Removing label code reference ''1.2'', in column 6, for the entry ''Rockets, with inert head'', UN0502, and adding ''1.2C'' in its place.

e. Removing the comma, in column 2, between the words ''Stannic chloride'' and ''pentahydrate'' for the entry ''Stannic chloride, pentahydrate'', UN 2440.

§ 172.101, Appendix B [Amended]

29. Amend Appendix B to § 172.101, in the List of Marine Pollutants by removing the word ''Fenaminphos'' and adding the word ''Fenamiphos'' in its place.

30. Amend § 172.102, in paragraph (c)(1) by removing special provision 25, and by revising paragraph (c)(4) introductory text to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(4) *Table 1, Table 2, and Table 3–IB Codes, Organic Peroxide IBC Code, and IP Special IBC Packing Provisions.* These provisions apply only to transportation in IBCs. IBCs may be used for the transportation of hazardous materials when no IBC code is assigned in the § 172.101 Table for the specific material only when approved by the Associate Administrator. The letter ''Z'' shown in the marking code for composite IBCs must be replaced with a capital code letter designation found in § 178.702(a)(2) of this subchapter to specify the material used for the outer packaging. Tables 1, 2, and 3 follow:

* * * * *

§ 172.203 [Amended]

31. Amend § 172.203(k) introductory text, in the second sentence, by removing the wording ''Caprylyl chloride'' and adding the wording ''Octanoyl chloride'' in each place it appears.

§ 172.407 [Amended]

32. Amend § 172.407(d)(4)(ii) by removing the wording ''Room 8421'' and adding the wording ''Office of Hazardous Materials Safety, Office of Hazardous Materials Standards, Room 8422'' in its place.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

33. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.53.

§ 173.4 [Amended]

34. Amend § 173.4(a)(1)(ii) by removing the wording ''solids, other than Division 6.1, Packing Group 1, Hazard Zone A or B materials'' and adding the wording ''solid materials'' in its place.

§ 173.10 [Amended]

35. Amend § 173.10(e), Note 2, in the second sentence by removing the word ''injury'' and adding the word ''damage'' in its place.

§ 173.21 [Amended]

36. Amend § 173.21(k) in the second sentence by removing the wording ''or § 175.10(a)(24)''.

§ 173.54 [Amended]

37. Amend § 173.54(f) by removing the phrase ''14 CFR 108.11'' and adding the phrase ''49 CFR 1544.219'' in its place.

§ 173.115 [Amended]

38. Amend § 173.115(j) by removing the wording ''173.315(a)(1)'' and adding the wording ''173.315(a)'' in its place.

§ 173.150 [Amended]

39. Amend § 173.150(e)(1) by removing the comma and the word '', and'' and adding a period in its place.

40. Amend § 173.225(b)(3) by adding a sentence at the end to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(b) * * *

(3) * * * *See* introductory paragraph of § 172.203(k) of this subchapter for additional description requirements for an organic peroxide that may qualify for more than one generic listing, depending on its concentration.

* * * * *

41. Amend § 173.247 by revising the section heading to read as follows:

§ 173.247 Bulk packaging for certain elevated temperature materials.

* * * * *

§ 173.305 [Amended]

42. Amend § 173.305(c)(1), in the second sentence by removing the word ''injury'' and adding the word ''damage'' in its place.

§ 173.315 [Amended]

43. Amend § 173.315 by:

a. In paragraph (i)(1)(iv) removing the last sentence.

b. In paragraph (j)(3), in the second sentence, removing the word ''injury'' and adding the word ''damage'' in its place.

§ 173.316 [Amended]

44. Amend § 173.316(a)(4) by removing the wording ''ASTM Standard B 580'' and adding the wording ''ASTM Standard B 580 (incorporated by reference, *see* § 171.7 of this subchapter)'' in its place.

§ 173.318 [Amended]

45. Amend § 173.318(a)(4) by removing the wording ''ASTM Standard B 580'' and adding the wording ''ASTM Standard B 580 (incorporated by reference, see § 171.7 of this subchapter)'' in its place.

§ 173.320 [Amended]

46. Amend § 173.320(c), in the first sentence, by removing the term ''P202'' and adding the term ''202'' in its place.

§ 173.334 [Amended]

47. Amend § 173.334(f), in the first sentence by removing the word ''injury'' and adding the word ''damage'' in its place.

§ 173.337 [Amended]

48. Amend § 173.337 in paragraph (a) in the first sentence, and in paragraph (b) in the first sentence, by removing the word ''injury'' and adding the word ''damage'' in each place it appears.

§ 173.415 [Amended]

49. Amend § 173.415(d) in the first sentence by removing the wording ''IAEA ''Safety Series No. 6'''' and adding the wording ''IAEA ''Safety Series No. 6'' (incorporated by reference, *see* § 171.7 of this subchapter)'' in its place.

§ 173.416 [Amended]

50. Amend § 173.416(b) in the first sentence by removing the wording ''''Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6'' ''and adding the wording '' ''Regulations for the Safe Transport of Radioactive Material, Safety Series No. 6'' (incorporated by reference, *see* § 171.7 of this subchapter)'' in its place.

§ 173.417 [Amended]

51. Amend § 173.417 by:

a. Removing the wording ''''Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6,'''' in the first sentence of paragraph (a)(5) and adding the wording '' ''Regulations for the Safe Transport of Radioactive Material, Safety Series No. 6'' (incorporated by reference, *see* § 171.7 of this subchapter),'' in its place.

b. Removing the wording ''ANSI N14.1'' in paragraph (a)(8)(i) and adding the wording ''ANSI N14.1 (incorporated by reference, see § 171.7 of this subchapter)'' in its place.

c. Removing the wording '' ''Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6'' '' in the first sentence of paragraph (b)(4) and adding the wording '' ''Regulations for the Safe Transport of Radioactive Material, Safety Series No. 6'' (incorporated by reference, *see* § 171.7 of this subchapter),'' in its place.

52. Amend § 173.420 by revising paragraphs (a)(2)(i), (a)(2)(iii), (b) and (c) to read as follows:

§ 173.420 Uranium hexafluoride (fissile, fissile excepted and nonfissile).

(a) * * *

(2) * * *

(i) American National Standard N14.1 (2001, 1995, 1990, 1987, 1982, 1971) (incorporated by reference, see § 171.7 of this subchapter) in effect at the time the packaging was manufactured;

(ii) * * *

(iii) Section VIII, Division I of the ASME Code (incorporated by reference, see § 171.7 of this subchapter), provided the packaging —

* * * * *

(b) Packagings for uranium hexafluoride must be periodically inspected, tested, marked and otherwise conform with the latest incorporated edition of ANSI N14.1 (incorporated by reference, *see* § 171.7 of this subchapter).

(c) Each repair to a packaging for uranium hexafluoride must be performed in accordance with the latest incorporated edition of ANSI N14.1 (incorporated by reference, see § 171.7 of this subchapter).

* * * * *

53. Amend § 173.471 by revising paragraphs (d) and (e) to read as follows:

§ 173.471 Requirements for U.S. Nuclear Regulatory Commission approved packages.

* * * * *

(d) Before export shipment of the package, the offeror shall obtain a U.S. Competent Authority Certificate for that package design, or if one has already been issued, the offeror shall register in writing (including a description of the quality assurance program required by 10 CFR part 71) with the U.S. Competent Authority as a user of the certificate. (**Note:** The person who originally applies for a U.S. Competent Authority Certificate will be registered automatically.) The registration request must be sent to the Associate Administrator for Hazardous Materials Safety (DHM–23), Department of Transportation, 400 Seventh Street, SW., Washington DC 20590–0001. Alternatively, the application with any attached supporting documentation in an appropriate format may be submitted by facsimile (fax) to (202) 366–3753 or (202) 366–3650, or by electronic mail (e-mail) to ''*ramcert@rspa.dot.gov.*'' Upon registration, the offeror will be furnished with a copy of the certificate. The offeror shall then submit a copy of the U.S. Competent Authority Certificate applying to that package design to the national competent authority of each country into or through which the package will be transported, unless the offeror has documentary evidence that a copy has already been furnished; and

(e) Each request for a U.S. Competent Authority Certificate as required by the IAEA regulations must be submitted in writing to the Associate Administrator. The request must be in triplicate and include copies of the applicable USNRC packaging approval, USNRC Quality Assurance Program approval number, and a reproducible 22 cm × 30 cm (8.5″ × 11″) drawing showing the make-up of the package. The request and accompanying documentation must be sent to the Associate Administrator for Hazardous Materials Safety (DHM–23), Department of Transportation, 400 Seventh Street, SW., Washington DC 20590–0001. Alternatively, the application with any attached supporting documentation in an appropriate format may be submitted by facsimile (fax) to (202) 366–3753 or (202) 366–3650, or by electronic mail (e-mail) to ''*ramcert@rspa.dot.gov.*'' Each request is considered in the order in which it is received. To allow sufficient time for consideration, requests must be received at least 90 days before the requested effective date.

* * * * *

54. Amend § 173.472 by revising paragraph (f) to read as follows:

§ 173.472 Requirements for exporting DOT Specification Type B and fissile packages.

* * * * *

(f) Each request for a U.S. Competent Authority Certificate as required by the IAEA regulations must be submitted in writing to the Associate Administrator. The request must be in triplicate and must include a description of the quality assurance program required by 10 CFR part 71, subpart H, or 49 CFR 173.474 and 173.475, and a reproducible 22 cm × 30 cm (8.5″ × 11″) drawing showing the make-up of the package. A copy of the USNRC quality assurance program approval will satisfy the requirement for describing the quality assurance program. The request and accompanying documentation may be sent by mail or other delivery service. Alternatively, the request with any attached supporting documentation submitted in an appropriate format may be sent by facsimile (fax) to (202) 366–3753 or (202) 366–3650, or by electronic mail (e-mail) to ''*ramcert@rspa.dot.gov.*'' Each request is considered in the order in which it is received. To allow sufficient time for consideration, requests must be received at least 90 days before the requested effective date.

* * * * *

55. Amend § 173.473 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 173.473 Requirements for foreign-made packages.

* * * * *

(a) * * *

(1) Have the foreign competent authority certificate revalidated by the U.S. Competent Authority, unless this has been done previously. Each request for revalidation must be submitted to the Associate Administrator. The request must be in triplicate, contain all the information required by Section VII of the IAEA regulations in Safety Series No. 6 (incorporated by reference, see § 171.7 of this subchapter), and include a copy in English of the foreign competent authority certificate. Alternatively, the request with any attached supporting documentation submitted in an appropriate format may be sent by facsimile (fax) to (202) 366–3753 or (202) 366–3650, or by electronic mail to ''*ramcert@rspa.dot.gov.*'' Each request is considered in the order in which it is received.

To allow sufficient time for consideration, requests must be received at least 90 days before the requested effective date;

(2) Register in writing with the U.S. Competent Authority as a user of the package covered by the foreign competent authority certificate and its U.S. revalidation. Alternatively, the registration request with any attached supporting documentation submitted in an appropriate format may be sent by facsimile (fax) to (202) 366–3753 or (202) 366–3650, or by electronic mail (e-mail) to ''*ramcert@rspa.dot.gov.*'' If the offeror is requesting the revalidation, registration is automatic; and

* * * * *

56. Amend § 173.476 by revising paragraph (c) introductory text to read as follows:

§ 173.476 Approval of special form Class 7 (radioactive) materials.

* * * * *

(c) Each request for a U.S. Competent Authority Certificate as required by the IAEA regulations must be submitted in writing, in triplicate, by mail or other delivery service to the Associate Administrator. Alternatively, the request with any attached supporting documentation submitted in an appropriate format may be sent by facsimile (fax) to (202) 366–3753 or (202) 366–3650, or by electronic mail (e-mail) to ''*ramcert@rspa.dot.*gov''. Each request is considered in the order in which it is received. To allow sufficient time for consideration, requests must be received at least 90 days before the requested effective date. Each petition for a U.S. Competent Authority Certificate must include the following information:

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

57. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 175.10 [Amended]

58. Amend § 175.10(a)(5), in the second sentence, by removing the phrase ''14 CFR 108.11(a) and (b)'' and adding the phrase ''49 CFR 1544.219'' in its place.

§ 175.320 [Amended]

59. Amend § 175.320(b)(5), in the first sentence, by removing the wording ''part 127'' and adding the wording ''part 133'' in its place.

PART 176—CARRIAGE BY VESSEL

60. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 176.2 [Amended]

61. Amend § 176.2, in the definition for ''INF cargo'', by removing the phrase ''(contained in IMDG Code, 2000 edition, see § 171.7 of this subchapter)'' and adding the phrase ''(contained in IMDG Code, incorporated by reference, see § 171.7 of this subchapter)'' in its place.

62. Amend § 176.128 by revising paragraph (c) to read as follows:

§ 176.128 Magazine stowage, general.

* * * * *

(c) Magazine stowage type B is required for Charges, propelling, for cannon, UN 0279, UN 0414, and UN 0242; and Charges, supplementary, explosive, UN 0600, in compatibility group C or D. Magazine stowage type C is required for detonators and similar articles in divisions and compatibility group 1.1B and 1.2B (explosive).

§ 176.340 [Amended]

63. Amend § 176.340 by:

a. In paragraph (b)(9), removing ''§ 173.32(e)(2), (3), and (4)'' and adding ''§ 180.605'' in its place.

b. In paragraph (b)(10), removing the wording ''paragraphs (g), (h), (i), and (k) of § 173.32'' and adding the wording ''§ 180.605(b) and (j)'' in its place.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

64. The authority citation for Part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

65. Amend § 177.840 by revising paragraph (l) to read as follows:

§ 177.840 Class 2 (gases) materials.

* * * * *

(l) *Operating procedure.* Each operator of a cargo tank motor vehicle that is subject to the emergency discharge control requirements in § 173.315(n) of this subchapter must carry on or within the cargo tank motor vehicle written emergency discharge control procedures for all delivery operations. The procedures must describe the cargo tank motor vehicle's emergency discharge control features and, for a passive shut-down capability, the parameters within which they are designed to function. The procedures must describe the process to be followed if a facility-provided hose is used for unloading when the cargo tank motor vehicle has a specially equipped delivery hose assembly to meet the requirements of § 173.315(n)(2) of this subchapter.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

66. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 178.3 [Amended]

67. Amend § 178.3(b) introductory text and paragraph (b)(1) by removing the wording ''Annex 1 of'' in each place it appears.

§ 178.51 [Amended]

68. Amend § 178.51(f)(1)(i) by removing the wording ''table I'' and adding the wording ''table 1'' in its place.

69. Amend § 178.58 by revising paragraph (k)(2)(ii) to read as follows:

§ 178.58 Specification 4DA welded steel cylinders for aircraft use.

* * * * *

(k) * * *

(2) * * *

(ii) The test cylinder must be placed between wedge-shaped knife edges having a 60° angle, rounded to a ½-inch radius.

* * * * *

§ 178.59 [Amended]

70. Amend § 178.59(j)(3)(iv) by removing the wording ''per-minute'' and adding the wording ''per minute'' in its place.

§ 178.61 [Amended]

71. Amend § 178.61 by:

a. In paragraph (b)(1), removing the wording ''table I'' and adding the wording ''table 1'' in its place.

b. In paragraph (b)(2), in the fourth sentence, removing the phrase ''paragraph (f)(1)'' and adding the phrase ''paragraph (f)(4)'' in its place.

§ 178.270–11 [Amended]

72. Amend § 178.270–11(d)(3), in the first sentence, by removing the phrase ''§ 173.32a of this subchapter'' and adding ''§ 178.273(b)(7)'' in its place.

§ 178.273 [Amended]

73. Amend § 178.273(b)(8)(ii), by removing the phrase ''§ 180.605 of this subchapter'' and adding ''§ 178.274(j)'' in its place.

§ 178.338–17 [Amended]

74. Amend § 178.338–17(b) by removing the wording ''ASTM Standard B 580'' and adding the wording ''ASTM Standard B 580 (incorporated by reference, see § 171.7 of this subchapter)'' in its place.

§ 178.354–3 [Amended]

75. Amend § 178.354–3(a) introductory text, in the first sentence, by removing the commas and phrase'', such as a DOT Specification 6C or 17C,''.

§ 178.356–3 [Amended]

76. Amend § 178.356–3(a), in the second sentence, by removing ''776mm'' and adding ''776 mm'' in its place.

§ 178.362–1 [Amended]

77. Amend § 178.362–1(b)(6) by removing the phrase ''2230 kg'' and adding the phrase ''2730 kg'' in its place.

§ 178.503 [Amended]

78. Amend § 178.503(e)(3), following the illustration, by removing the parenthetical expression ''(as in § 178.503(c)(1), (2), (3), (4), and (5))'' and adding the parenthetical expression ''(as in § 178.503(c)(1))'' in its place.

79. Amend § 178.603 by revising the introductory text to paragraph (e) to read as follows:

§ 178.603 Drop test.

* * * * *

(e) *Drop height.* Drop heights, measured as the vertical distance from the target to the lowest point on the package, must be equal to or greater than the drop height determined as follows:

* * * * *

§ 178.707 [Amended]

80. Amend § 178.707 by revising paragraph (a) to read as follows:

§ 178.707 Standards for Composite IBCs.

(a) The provisions in this section apply to composite IBCs intended to contain solids and liquids. To complete the marking codes listed below, the letter ''Z'' must be replaced by a capital letter in accordance with § 178.702(a)(2) to indicate the material used for the outer packaging. Composite IBC types are designated:

(1) 11HZ1 Composite IBCs with a rigid plastic inner receptacle for solids loaded or discharged by gravity.

(2) 11HZ2 Composite IBCs with a flexible plastic inner receptacle for solids loaded or discharged by gravity.

(3) 21HZ1 Composite IBCs with a rigid plastic inner receptacle for solids loaded or discharged under pressure.

(4) 21HZ2 Composite IBCs with a flexible plastic inner receptacle for solids loaded or discharged under pressure.

(5) 31HZ1 Composite IBCs with a rigid plastic inner receptacle for liquids.

(6) 31HZ2 Composite IBCs with a flexible plastic inner receptacle for liquids.

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

81. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

82. Amend § 179.201–2, in paragraph (a), by removing ''1½'' and adding ''½ (1)'' each place it appears in the table, in column 2, for the entries ''Over 78 to 96 inches'' and ''Over 96 to 112 inches''.

§ 179.500–10 [Amended]

83. Amend § 179.500–10(a), in the first sentence by removing the word ''injury'' and adding the word ''damage'' in its place.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

84. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 180.417 [Amended]

85. Amend § 180.417(c)(2), in the second sentence, by removing the wording ''Director, Regional Office of Motor Carrier Safety, Federal Highway Administration'' and adding the wording ''Field Administrator, Regional Service Center, Federal Motor Carrier Safety Administration'' in its place.

Issued in Washington, DC, on September 3, 2002, under authority delegated in 49 CFR part 1.

Ellen G. Engleman,

Administrator.

[FR Doc. 02–22817 Filed 9–26–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH33

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Appalachian Elktoe

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), are designating critical habitat for the Appalachian elktoe (*Alasmidonta raveneliana*) under the Endangered Species Act of 1973, as amended (Act). The areas designated as critical habitat for the Appalachian elktoe total approximately 231.1 kilometers (144.3 miles) of various segments of rivers in North Carolina and one river in Tennessee.

Critical habitat identifies specific areas that are essential to the conservation of a listed species and that may require special management considerations or protection.

Section 7(a)(2) of the Act requires that each Federal agency shall, in consultation with us, ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. Section 4 of the Act requires us to consider economic and other impacts of specifying any area as critical habitat.

We solicited data and comments from the public on all aspects of the proposal, including data on economic and other impacts of the designation.

DATES: This rule is effective on October 28, 2002.

ADDRESSES: Comments and materials received, as well as supporting documentation used in preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, NC 28801.

FOR FURTHER INFORMATION CONTACT: John Fridell, Fish and Wildlife Biologist, Asheville Field Office (*see* **ADDRESSES**) (telephone 828/258–3939, extension 225; facsimile 828/258–5330).

SUPPLEMENTARY INFORMATION:

Background

The Appalachian elktoe (*Alasmidonta raveneliana*) is a freshwater mussel that has a thin, kidney-shaped shell, reaching up to about 10 centimeters (4 inches) (J.A. Fridell, Service, pers. observation 1999). Juveniles generally have a yellowish-brown periostracum (outer shell surface), while the periostracum of the adults is usually dark brown to greenish-black in color. Although rays are prominent on some shells, particularly in the posterior portion of the shell, many individuals have only obscure greenish rays. The shell nacre (inside shell surface) is shiny, often white to bluish-white, changing to a salmon, pinkish, or brownish color in the central and beak cavity portions of the shell; some specimens may be marked with irregular brownish blotches (adapted from Clarke 1981). Clarke (1981) provides a detailed description of the species' shell, with illustrations; Ortmann (1921) discussed soft parts.

Distribution, Habitat, and Life History

The Appalachian elktoe is known only from the mountain streams of western North Carolina and eastern Tennessee. Although the complete historical range of the Appalachian elktoe is unknown, available information suggests that the species once lived in the majority of the rivers and larger creeks of the upper Tennessee River system in North Carolina, with the possible exception of the Hiwassee and Watauga River systems (the species has not been recorded from either of these river systems). In Tennessee, the species is known only from its present range in the main stem of the Nolichucky River.

Currently, the Appalachian elktoe has a very fragmented, relict distribution. The species still survives in scattered pockets of suitable habitat in portions of the Little Tennessee River system, Pigeon River system, and the Little River in North Carolina and the Nolichucky River system in North Carolina and Tennessee. In the Little Tennessee River system in North Carolina, populations survive in the reach of the main stem of the Little Tennessee River, between the city of Franklin and Fontana Reservoir, in Swain and Macon Counties (Service 1994, 1996; McGrath 1999; Fridell, pers. observation, 2002), and in scattered reaches of the main stem of the Tuckasegee River in Jackson and Swain Counties, from below the town of Cullowhee downstream to Bryson City (M. Cantrell, Service, pers. comm. 1996; Fridell, pers. observation 1996, 1997; McGrath 1998; T. Savidge, North Carolina Department of Transportation (NCDOT), pers. comm. 2001). The species was recently discovered (in 2000) in the Cheoah River, below Santeetlah Lake, in Graham County (W. Pennington, Pennington and Associates, Inc., Knoxville, Tennessee, pers. comm. 2000). On August 7, 2002, biologists with the NCDOT, U.S. Forest Service, and the Service recorded eleven live individuals and four shells from the Cheoah River below Santeetlah Dam, during a survey of portions of the river (Fridell, pers. observation 2002).

In the Pigeon River system in North Carolina, a small population of the Appalachian elktoe occurs in small, scattered sites in the West Fork Pigeon River and in the main stem of the Pigeon River, above Canton, in Haywood County (Fridell, pers. observation 1999; McGrath 1999). The Little River (upper French Broad River system) population of the species, in Transylvania County, NC, is restricted to small, scattered pockets of suitable habitat downstream of Cascade Lake (Fridell, pers. observation 2000; C. McGrath, North Carolina Wildlife Resources Commission (NCWRC), pers. comm. 2000).

In the Nolichucky River system, the Appalachian elktoe survives in a few scattered areas of suitable habitat in the Toe River, Yancey and Mitchell Counties, NC (Service 1994, 1996; McGrath 1996, 1999); Cane River, Yancey County, NC (Service 1994, 1996; McGrath 1997); and the main stem of the Nolichucky River, Yancey and Mitchell Counties, NC, extending downstream to the vicinity of Erwin in Unicoi County, TN (Service 1994, 1996; Fridell, pers. observation 1998; S. Ahlstedt, U.S. Geological Survey, pers. comm. 2002). Two individuals have been found recently in the North Toe River, Yancey and Mitchell Counties, NC, below the confluence of Crabtree Creek (McGrath 1999), and 15 live individuals, with no more than 2 to 3 at each site (Fridell, pers. observation 2000), and one shell (S. Fraley, Tennessee Valley Authority, Norris, TN, pers. comm. 1999) have been recorded from the South Toe River, Yancey County, NC. The majority of the surviving occurrences of the Appalachian elktoe appear to be small to extremely small and restricted to scattered pockets of suitable habitat.

Historically, the species has been recorded from Tulula Creek (Tennessee River drainage), the main stem of the French Broad River, and the Swannanoa River (French Broad River system) (Clarke 1981), but it has apparently been eliminated from these streams (Service 1994, 1996). There is also a historical record of the Appalachian elktoe from the North Fork Holston River in Tennessee (S.S. Haldeman collection); however, this record is believed to represent a mislabeled locality (Gordon 1991). If the historical record for the species in the North Fork Holston River was a good record, the species has apparently been eliminated from this river as well.

The Appalachian elktoe has been reported from relatively shallow, medium-sized creeks and rivers with cool, clean, well-oxygenated, moderate- to fast-flowing water. The species is most often found in riffles, runs, and shallow flowing pools with stable, relatively silt-free, coarse sand and gravel substrate associated with cobble, boulders, and/or bedrock (Gordon 1991; Service 1994 and 1996; J.M. Alderman, NCWRC, pers. comm. 2000; McGrath, pers. comm. 2000; Savidge, pers. comm. 2000; Fridell, pers. observation 1989 through 2002). Stability of the substrate appears to be critical to the Appalachian elktoe, and the species is seldom found in stream reaches with accumulations of silt or shifting sand, gravel, or cobble (Fridell, pers. observation 1989 through 2001). Individual specimens that have been encountered in these areas are believed to have been scoured out of upstream areas during periods of heavy rain and have not been found on subsequent surveys (McGrath, pers. comm. 1996; Fridell, pers. observation 1995, 1996, 1999).

Like other freshwater mussels, the Appalachian elktoe feeds by filtering food particles from the water column. The specific food habits of the species are unknown, but other freshwater mussels have been documented to feed on detritus (decaying organic matter), diatoms (various minute algae) and other algae and phytoplankton (microscopic floating aquatic plants), and zooplankton (microscopic floating aquatic animals). The reproductive cycle of the Appalachian elktoe is similar to that of other native freshwater

mussels. Males release sperm into the water column, and the sperm are then taken in by the females through their siphons during feeding and respiration. The females retain the fertilized eggs in their gills until the larvae (glochidia) fully develop. The mussel glochidia are released into the water, and within a few days they must attach to the appropriate species of fish, which they then parasitize for a short time while they develop into juvenile mussels. They then detach from their fish host and sink to the stream bottom where they continue to develop, provided they land in a suitable substrate with the correct water conditions.

Personnel with the Tennessee Technological University at Cookeville, TN, identified the banded sculpin (*Cottus carolinae*) as a host species for glochidia of the Appalachian elktoe (M. Gordon, Tennessee Technological University, pers. comm. 1993). The U.S. Environmental Protection Agency's (EPA) Science and Ecosystem Support Division's Aquatic Lab in Athens, Georgia, also documented the mottled sculpin (*C. bairdi*), a species more common within the majority of the range of the Appalachian elktoe than the banded sculpin, as a suitable host for the Appalachian elktoe (A. Keller, EPA, Athens, Georgia, pers. comm. 1999). The general habitat requirements of the mottled sculpin are very similar to those of the Appalachian elktoe and are described by several authors (Lee *et al.* 1980, Etnier and Starnes 1993, Rohde *et al.* 1994, Jenkins and Burkhead 1994) as riffles, runs, and flowing portions of pools with gravel and rocky substrata in cool, clean, well-oxygenated, moderate- to fast-gradient streams. The banded sculpin has similar habitat requirements but is considered to be more tolerant of warmer stream temperatures than the mottled sculpin (Lee *et al.* 1980, Etnier and Starnes 1993, Rohde *et al.* 1994, Jenkins and Burkhead 1994). Where the distribution of the two species overlap in streams supporting the Appalachian elktoe, the mottled sculpin is typically the most abundant, with the banded sculpin being generally more common in the downstream reaches of the streams, below the Appalachian elktoe occurrences. Of the two sculpin species, it is the mottled sculpin that most likely/most commonly serves as the host species for the Appalachian elktoe. Additional studies are needed to determine if any other native fish species may also serve as hosts for the glochidia of the Appalachian elktoe. The life span and many other aspects of the Appalachian elktoe's life history are currently unknown.

Reasons for Decline and Threats to Surviving Populations

Available information indicates that several factors have contributed to the decline and loss of populations of the Appalachian elktoe and threaten the remaining populations. These factors include pollutants in wastewater discharges (sewage treatment plants and industrial discharges); habitat loss and alteration associated with impoundments, channelization, and dredging operations and the run-off of silt, fertilizers, pesticides, and other pollutants from land disturbance activities implemented without adequate measures to control erosion and/or storm water (Service 1994, 1996).

Mussels are known to be sensitive to numerous pollutants, including, but not limited to, a wide variety of heavy metals, high concentrations of nutrients, ammonia, and chlorine—pollutants commonly found in many domestic and industrial effluents (Havlik and Marking 1987). In the early 1900s, Ortmann (1909) noted that the disappearance of unionids (mussels) is the first and most reliable indicator of stream pollution. Keller and Zam (1991) concluded that mussels are more sensitive to metals than commonly tested fish and aquatic insects. The life cycle of native mussels makes the reproductive stages especially vulnerable to pesticides and other pollutants (Ingram 1957, Stein 1971, Fuller 1974, Gardner *et al.* 1976). Effluent from sewage treatment facilities can be a significant source of pollution that can severely affect the diversity and abundance of aquatic mollusks. The toxicity of chlorinated sewage effluents to aquatic life is well documented (Brungs 1976, Tsai 1975, Bellanca and Bailey 1977, EPA 1985, Goudreau *et al.* 1988), and mussel glochidia (larvae) rank among the most sensitive invertebrates in their tolerance to toxicants present in sewage effluents (Goudreau *et al.* 1988). Goudreau *et al.* (1988) found that the recovery of mussel populations may not occur for up to 3.2 kilometers (km) (2 miles (mi)) below the discharge points of chlorinated sewage effluent.

Land-clearing and disturbance activities carried out without proper sedimentation and storm-water control pose a significant threat to the Appalachian elktoe and other freshwater mussels. Mussels are sedentary and are not able to move long distances to more suitable areas in response to heavy silt loads. Natural sedimentation resulting from seasonal storm events probably does not significantly affect mussels, but human activities often create excessively heavy silt loads that can have severe effects on mussels and other aquatic organisms. Siltation has been documented to adversely affect native freshwater mussels both directly and indirectly (Ellis 1936, Marking and Bills 1979, Kat 1982, Aldridge *et al.* 1987). Siltation degrades water and substrate quality, limiting the available habitat for freshwater mussels (and their fish hosts), thereby limiting their distribution and potential for expansion and maintenance of their populations; irritates and clogs the gills of filter-feeding mussels, resulting in reduced feeding and respiration; smothers mussels if sufficient accumulation occurs; and increases the potential exposure of the mussels to other pollutants. Ellis (1936) found that less than 2.5 centimeters (1 inch) of sediment deposition caused high mortality in most mussel species. Sediment accumulations that are less than lethal to adults may adversely affect or prevent the recruitment of juvenile mussels into the population. Also, sediment loading in rivers and streams during periods of high discharge is abrasive to mussel shells. Erosion of the outer shell allows acids to reach and corrode underlying layers that are composed primarily of calcium, which dissolves under acid conditions (Harman 1974).

The effects of impoundments on mussels are also well documented. For the most part, lakes do not occur naturally in western North Carolina and eastern Tennessee (most lakes in western North Carolina and eastern Tennessee are man-made), and the Appalachian elktoe, like the majority of our other native mussels, fish, and other aquatic species in these areas, is adapted to stream conditions (flowing, highly oxygenated water and coarse sand and gravel bottoms). Dams change the habitat from flowing to still water. Water depth increases, flow decreases, and silt accumulates on the bottom (Williams *et al.* 1992), altering the quality and stability of the remaining stream reaches by affecting water flow regimes, velocities, temperature, and chemistry. Dams that operate by releasing cold water from near the bottom of the reservoirs lower the water temperature downstream, changing downstream reaches from warm-or cool-water streams to cold-water streams and affecting their suitability for many of the native species historically inhabiting these stream reaches (Miller *et al.* 1984, Layzer *et al.* 1993). The effects of impoundments result in changes in fish communities (fish host species may be eliminated) (Brimm 1991), and in

mussel communities (species requiring clean gravel and sand substrates are eliminated) (Bates 1962). In addition, dams result in the fragmentation and isolation of populations of species and act as effective barriers to the natural upstream and downstream expansion or recruitment of mussel and fish species.

The information available demonstrates that habitat deterioration resulting from sedimentation and pollution from numerous point and nonpoint sources, when combined with the effects of other factors (including habitat destruction, alteration, and fragmentation resulting from impoundments, channelization projects, etc.), has played a significant role in the decline of the Appalachian elktoe. We believe this is particularly true of the extirpation of the Appalachian elktoe from the Swannanoa and French Broad Rivers and portions of the Pigeon, upper Little River, and upper Little Tennessee River systems. We believe these factors also have contributed to the extirpation of the species from parts of the upper Tuckasegee River, Cheoah River, and Tulula Creek, though the effects of impoundments are believed to have played an even more significant role in the loss of the species in the upper reaches of these streams.

The most immediate threats to the remaining populations of the Appalachian elktoe are associated with sedimentation and other pollutants (*i.e.*, fertilizers, pesticides, heavy metals, oil, salts, organic wastes, *etc.*) from nonpoint sources. Much of the Nolichucky River in North Carolina contains heavy loads of sediment, primarily from past land disturbance activities within its watershed, and suitable habitat for the Appalachian elktoe appears to be very limited in this river system. The species has not been found in the Nolichucky River system in substrates with accumulations of silt and shifting sand; it is restricted to small, scattered pockets of stable, relatively clean, and gravelly substrates. The same is true of the other surviving populations of the species.

Previous Federal Actions

In the May 22, 1984, Animal Notice of Review published in the **Federal Register** (49 FR 21675) and again in the January 6, 1989, Animal Notice of Review (54 FR 579), we recognized the Appalachian elktoe as a species under review for potential addition to the Federal List of Endangered and Threatened Wildlife and Plants. In those notices, we designated the Appalachian elktoe as a category 2 candidate for Federal listing. We no longer maintain a list of category 2 candidate species. At that time, category 2 was defined as including species for which we had some information indicating that the taxa may be under threat, but not enough information was available to determine if they warranted Federal listing and the preparation of a proposed rule. Subsequently, surveys of historical and potential Appalachian elktoe habitat were conducted, revealing that the species had undergone a significant decline throughout its historical range and that the remaining occurrences were threatened by many of the same factors that are believed to have resulted in this decline. Accordingly, on June 10, 1992, we reclassified the Appalachian elktoe as a category 1 candidate. At that time, category 1 candidates were those species for which we had adequate information on biological vulnerability and threats to support proposals to list them as endangered or threatened species. On April 20, 1992, and again on August 21, 1992, we notified appropriate Federal, State, and local governmental agencies that we were gathering information on the Appalachian elktoe and that the species might be proposed for Federal listing. We received a total of six written comments in response to these two notices. The NCWRC (two written comments), the North Carolina Natural Heritage Program (two written comments), and an interested biologist expressed their support for the species' being proposed for protection under the Act. The Natural Resources Conservation Service stated that they did not have any additional information on this species.

On September 3, 1993, we published a proposed rule to list the Appalachian elktoe as an endangered species (58 FR 46940). The proposed rule provided information on the species' biology, status, and threats to its continued existence and included our proposed determination that the designation of critical habitat was not prudent for the Appalachian elktoe. We solicited comments and suggestions concerning the proposed rule from the public, concerned governmental agencies, the scientific community, industry, and other interested parties. We requested comments from appropriate Federal and State agencies, county governments, scientific organizations, and interested parties by letters dated September 14, 1993, and January 27, 1994. We published a legal notice, which invited general public comment, in the following newspapers—*Erwin Record,* Erwin, TN, September 22, 1993; *Mitchell News Journal,* Spruce Pine, NC, September 22, 1993; *Yancey Common Times Journal,* Burnsville, NC, September 22, 1993; *Smoky Mountain Times,* Bryson City, NC, September 23, 1993; and *Franklin Press, Inc.,* Franklin, NC, September 24, 1993.

We received four comments in response to the proposed rule, one supporting the listing and three requesting a public hearing. On January 21, 1994, we published a notice announcing the public hearing and the reopening of the comment period through February 21, 1994, to ensure that all interested parties had ample time to provide information on the proposed rule (59 FR 3326). On February 8, 1994, we held a public hearing at the Mitchell High School in Bakersville, NC. We received 20 verbal statements and written comments during the public hearing; 14 of them expressed opposition to the listing of the Appalachian elktoe, 5 expressed support for the listing, and 1 expressed an interest but offered neither support nor opposition. We received 40 additional written comments during the reopened comment period; 8 opposed the listing, 31 supported the listing, and 1 expressed neither opposition nor support.

Following our review of all the comments and information received throughout the listing process, we incorporated appropriate changes and on November 23, 1994, we published a final rule listing the Appalachian elktoe as endangered (59 FR 60324). That decision included our determination that the designation of critical habitat was not prudent for the Appalachian elktoe because, after a review of all the available information, we determined that such designation would not be beneficial to the species.

On June 30, 1999, the Southern Appalachian Biodiversity Project and the Foundation for Global Sustainability filed a lawsuit in the United States District Court for the District of Columbia against the Service, the Director of the Service, and the Secretary of the Interior challenging the Service's ''not prudent'' critical habitat determinations for four species in North Carolina—the Appalachian elktoe (*Alasmidonta raveneliana*), Carolina heelsplitter (*Lasmigona decorata*), spruce-fir moss spider (*Microhexura montivaga*), and rock gnome lichen (*Gymnoderma lineare*). On February 29, 2000, the U.S. Department of Justice entered into a settlement agreement with the plaintiffs in which we agreed to reexamine our prudency determination and, if appropriate, submit to the **Federal Register**, by February 1, 2001, a withdrawal of the

existing not prudent determination for the Appalachian elktoe, together with a new proposed critical habitat determination. We agreed further that if we determined that the designation of critical habitat would be prudent for the Appalachian elktoe, we would send a final rule of this finding to the **Federal Register** by November 1, 2001.

On February 8, 2001, we published a prudency determination and a proposed designation of critical habitat for the Appalachian elktoe (66 FR 9540). This proposed rule included maps and a description of all areas under consideration for designation as critical habitat for the species. By letter of February 9, 2001, we also notified appropriate Federal and State agencies, local governments, scientific organizations, individuals knowledgeable about the species, and other interested parties about the proposal and requested their comments. A legal notice that announced the availability of the proposed rule and invited public comment was published in the following newspapers—*Erwin Record,* Erwin, TN; *Franklin Press, Inc.,* Franklin, NC; *Graham Star,* Robbinsville, NC; *Mitchell News Journal,* Spruce Pine, NC; *Mountaineer,* Waynesville, NC; *Smoky Mountain Times,* Bryson City, NC; *Transylvania Times,* Brevard, NC; *and Yancey Common Times Journal,* Burnsville, NC. At the request of the Transylvania County (NC) Board of Commissioners, we attended a Board of Commissioners public meeting on March 26, 2001, in Brevard, NC, where we gave a presentation on the proposed designation of critical habitat for the Appalachian elktoe and responded to questions concerning the proposal from the commissioners and the public in attendance.

In the proposed rule and associated notifications, all interested parties were requested to submit factual reports or information by April 9, 2001, that might contribute to our determination and the development of a final rule. In response to the proposed rule, we received 49 written comments, including two requests for public hearings.

On August 29, 2001, we entered into an agreement (referred to as the ''mini-global'' agreement) with the plaintiffs from the June 30, 1999, lawsuit that allowed us to reallocate funding to complete listing decisions on 14 species, proceed with proposed listing decisions on 8 species, take action on 4 listing petitions, and extend the deadline on 8 critical habitat designations, including the final determination concerning the designation of critical habitat for the Appalachian elktoe. Pursuant to this agreement, our deadline for submitting the final determination concerning the designation of critical habitat for the Appalachian elktoe to the **Federal Register** was extended to July 6, 2002. However, because we were unable to spend fiscal year 2001 funding on the required draft economic analysis of the potential effects of the designation of critical habitat for the Appalachian elktoe and approval for spending fiscal year 2002 appropriated funds for listing was not received until mid-November 2001, the development of the draft economic analysis was delayed. We then filed a motion in the District Court pursuant to our settlement agreement, requesting an extension to complete the final designation. On April 15, 2002, the District Court granted us an extension until September 20, 2002, to finalize the critical habitat designation for the Appalachian elktoe.

On May 16, 2002, we published a notice in the **Federal Register** (67 FR 34893) announcing the availability of a draft economic analysis for the proposed designation of critical habitat for the Appalachian elktoe; announcing the purpose, time, and location of public hearings requested during the initial comment period on the proposed rule; and announcing the reopening of the formal comment period on the proposed rule from May 16, 2002, to July 1, 2002. We notified appropriate agencies, governmental officials, institutions, and other interested parties, by letters dated May 6, 2002, of the reopening of the comment period, availability of the draft economic analysis, and the public hearings. In addition, we published legal notices in the newspapers listed above announcing the reopening of the comment period, the public hearings, and the availability of the draft economic analysis and inviting public participation and comments.

In response to the requests for public hearings, we held two hearings, the first on June 4, 2002, in Erwin, TN, and the second on June 6, 2002, in Bryson City, NC. Twenty-three individuals presented oral comments at the two hearings (three of these individuals provided comments at both hearings), and we received 28 written comments during the reopened comment period. In addition, at the request of the Yancey County (NC) Manager, we attended a public meeting of the Yancey County Board of Commissioners on June 11, 2002, where we gave a presentation about the proposed designation of critical habitat for the Appalachian elktoe and an overview of past and potential future activities within the general area, with Federal involvement, that have required or are likely to require consultation under section 7 of the Act.

Summary of Comments and Recommendations

We received 26 oral comments at the two public hearings and a total of 78 written comments during the two comment periods-49 during the initial comment period and 29 during the reopened comment period. Of the responses/comments received, 71 supported the designation of critical habitat for the Appalachian elktoe, 25 expressed opposition to the designation, and 8 expressed neither support nor opposition but requested or provided additional information. Comments were received from The Eastern Band of Cherokee Indians, 1 congressional representative from Georgia, 1 Federal agency, 1 State agency, 3 elected county officials, 9 private organizations or businesses, and 62 private individuals. Several of the respondents provided comments during the initial comment period on the proposed rule and additional comments on the draft economic analysis and/or proposed rule during the reopened comment period. Some respondents provided both oral comments (during one or both of the public hearings) and written comments.

We also contacted, by phone and letters dated February 26, 2001, four experts in the field of malacology (native freshwater mussel biology and ecology) and requested that they serve as peer reviewers of the proposal to designate critical habitat for the Appalachian elktoe. However, none of the four submitted comments on the proposal.

We reviewed all comments received for substantive issues and any new information regarding the Appalachian elktoe. Similar comments were grouped into issues relating specifically to the proposed critical habitat determination and the draft economic analysis with regard to the proposed determination. These issues and our response to each are presented below.

Issue 1: One respondent pointed out that while the proposed rule states that the available information suggests that the Appalachian elktoe once lived in the majority of the rivers and larger creeks of the upper Tennessee River system in North Carolina, the species has not been recorded in the Watauga or Hiwassee Rivers.

Response: The respondent is correct, and we have mentioned these two river systems in this rule as possible exceptions to the historical range of the Appalachian elktoe.

Issue 2: One respondent recommended that, because of the critical role of fish hosts in the mussel's life cycle, the final rule should include a discussion about the habitat and ecological requirements of the mottled sculpin. The same respondent suggested that other more motile fish species may serve as hosts for the glochidia of the Appalachian elktoe and may have some effect on which areas should be considered critical habitat.

Response: We agree with the respondent's first recommendation and have included a brief discussion of the habitat requirements of the mottled sculpin and banded sculpin in the ''Background'' section of this rule. However, while we also agree that it is possible that other fish species may also serve as hosts for the glochidia of the Appalachian elktoe, additional research is needed to determine this. The two studies that have been conducted (*see* the *''Background''* section above) have identified only the two sculpin species—the mottled sculpin and the banded sculpin—as suitable hosts for the Appalachian elktoe. The areas we are designating as critical habitat constitute our best assessment of the areas needed for the conservation of the Appalachian elktoe based on the best scientific information currently available to us. These areas contain the habitat elements essential to the life cycle needs of the Appalachian elktoe, as they are currently known, including habitat for the species' fish hosts, as they are known. To the extent feasible, we will continue, with the assistance of other Federal, State, and private researchers, to conduct research on the life cycle needs of the species. Should new information become available indicating that other areas are essential to the conservation of the Appalachian elktoe, we may revise the designated critical habitat accordingly in a subsequent rule.

Issue 3: Two respondents recommended that the final rule would be more informative if it described the specific impacts in the streams and stream reaches where the Appalachian elktoe is believed to have been adversely affected or has been extirpated. Another respondent requested information about what has caused the decline in Appalachian elktoe populations and why, if water quality has improved in the Nolichucky River system, the Appalachian elktoe populations have declined.

Response: We have included some additional information in the ''Background'' section of this rule (see ''Reasons for Decline and Threats to Surviving Populations'' section) concerning the factors that are believed to have contributed to the decline of the species throughout its range and that threaten the surviving occurrences.

The available information demonstrates that the decline of the Appalachian elktoe throughout its range can be attributed to several factors, including siltation resulting from past logging, mining, agricultural, and construction activities; the run-off and discharge of organic and inorganic pollutants from industrial, municipal, agricultural, and other point and nonpoint sources; habitat alterations associated with impoundments, channelization, and dredging; and other natural and human-related factors that adversely modify the aquatic environment. It is true that there have been significant improvements in both water and substrate (stream bottom) quality in portions of the Nolichucky River system and other river systems supporting the species as a result of the implementation of Federal and State regulations for controlling sediment and other pollutants and an increased awareness and/or interest in, and voluntary implementation of, conservation measures. Many of the industries, landowners, builders, etc., in the watersheds of these rivers are to be commended for implementing measures for controlling the run-off of sediment and other pollutants into the rivers and their tributaries. The status of the Appalachian elktoe population in the Nolichucky River system appears to be in the process of recovering as a result of these improvements, and the species appears to be in the process of recolonizing portions of these rivers. However, the population in the Nolichucky River system is still very small and scattered. Despite intensive surveys by biologists with the Service, NCWRC, NCDOT, and Tennessee Valley Authority, no more than one to three specimens of the Appalachian elktoe have been found at most of the sites where it presently occurs in the Toe, Cane, North Toe, and South Toe Rivers. Also, while there have been improvements, activities are still occurring within the Nolichucky River watershed that continue to adversely affect the quality of portions of these rivers, and other activities are proposed that have the potential to adversely affect them.

Issue 4: One respondent requested more specific information on the habitat requirements of the species and another respondent stated that the Service lacks the fundamental scientific qualifications necessary to determine Appalachian elktoe habitat requirements and to specify ''critical habitat'' for the species. Specifically, the latter respondent stated that there is little or no available quantifiable data on the species' habitat requirements, such as ''stream order, hydrology, water depth, water velocity, substrate preferences, and water temperature and chemistry.'' This respondent stated the Service's determination of critical habitat appears to rely solely on observations of general habitat conditions in streams where the Appalachian elktoe has been found.

Response: The Act requires us to base our critical habitat designations on the best scientific information available. While there is still much that we do not know or understand about the habitat requirements of the Appalachian elktoe (in particular, the species' microhabitat requirements), the primary constituent elements, as they are identified in the rule, are based on descriptions of the species' habitat provided by biologists with the Service, NCWRC, NCDOT, and Tennessee Technological University who have been involved in conducting surveys and monitoring populations of the species; they represent the best information on the habitat requirements of the species currently available to us. They are not observations of the general habitat conditions within the streams where the Appalachian elktoe occurs; rather, they represent a description of the habitat conditions present at the sites within these streams where the Appalachian elktoe occurs as compared to the other sites and/or reaches of these streams where the species is not found. While we will continue (with the assistance of other Federal, State, and private researchers) to conduct studies of the species and its habitat requirements, we do not believe it is likely that more specific information on the species' habitat requirements would result in a change to the stream reaches designated as critical habitat for the Appalachian elktoe. The continued presence of the Appalachian elktoe in these streams indicates the presence of the habitat requirements for the species, though we may currently understand these requirements only in relatively general terms. Rather, more specific information would allow us to better assess potential effects to the species and its habitat and to better identify and implement recovery and management activities for the species within these stream reaches. However, if new information becomes available indicating that other areas are essential to the conservation of the Appalachian elktoe, we may revise the designated critical habitat accordingly through a subsequent rulemaking. Similarly, if new information indicates any of the

areas we have designated should not be included in the critical habitat designation because they no longer meet the definition of critical habitat and do not provide the habitat elements essential to the life-cycle needs of the species, we may, through a subsequent rulemaking, revise the critical habitat designation to omit these areas.

Issue 5: One respondent stated that the Act defines critical habitat as ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed * * * and (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * *'' The respondent further stated that the Service has insufficient information to make a finding that the Appalachian elktoe in fact occupied Unit 3, the Cheoah River below Santeetlah Dam in Graham County, NC, at the time it was listed.

Response: While it is true that we were unaware of the Appalachian elktoe's occurrence in the Cheoah River when the species was listed on November 23, 1994 (FR 59 60324), the subsequent discovery of the species in the Cheoah River (Pennington, pers. comm. 2000) and the fact that the species is documented to have historically occurred in Tulula Creek (Clarke 1981), a tributary to the upper Cheoah River, indicates that the occurrence of the Appalachian elktoe in the Cheoah River is a natural occurrence of the species that existed both historically and at the time of listing.

Issue 6: One respondent stated that the conditions in the Nolichucky River system seem to vary considerably from the primary constituent element items 2 (geomorphically stable stream channels and banks) and 4 (sand, gravel, cobble, boulder, and bedrock substrates with no more than low amounts of fine sediment) in the list of primary constituent elements in the proposed rule and that conditions in the Cheoah River may not agree with items 1 (permanent flowing, cool, clean water), 3 (pool, riffle, and run sequences within the channel), and 6 (periodic natural flooding).

Response: Stream conditions throughout the Nolichucky River system do vary and where all of the constituent elements do not exist, the Appalachian elktoe is rarely found, though there have been rare instances in both the Toe (Nolichucky River system) and Little Tennessee Rivers that single individual specimens of the elktoe have been observed in unstable, sifting sand substrates. However, these individuals were not found during subsequent surveys and were believed to be individuals that had been displaced and deposited by storm flows (McGrath, pers. comm. 1996; Fridell, pers. observation 1995, 1996, 1999). Within the areas we are designating as critical habitat, the sites that support the majority, and healthiest, of the occurrences of the species provide all of the primary constituent elements, though at some sites (especially those sites and stream reaches supporting the lowest numbers of individuals) one or more of the constituent elements, though present, appear to be limited or of marginal quality and may require additional management and enhancement for full recovery of the species. At the sites in the streams within the Nolichucky River system, as well as elsewhere in the stream reaches that we are designating as critical habitat, the Appalachian elktoe is found consistently, with the few exceptions mentioned above, in stable substrates (most often comprised of sand and gravel interspersed in areas of cobble, boulders, or exposed bedrock) along reaches with overall stable, well-vegetated stream banks.

Concerning the questions raised about the conditions in the Cheoah River, the habitat conditions within the reach of the river that is being designated as critical habitat have been characterized as riffle, run, and pool habitat in varying sequences, with interspersed ledge/step habitat in some reaches (Normandeau Associates Inc. 2001). Flow within the designated reach of the Cheoah River is maintained by leakage—2 cubic feet per second (cfs)—from Santeetlah Dam (Normandeau Associates Inc. 1999) and by flows from numerous tributary streams, including Cochran, Rock, Yellow, Deep, Barker, and Bear Creeks and several unnamed tributaries. Data from the U.S. Geological Survey (USGS) gage (#0351706800) located on the river near Bear Pen Gap, approximately 1.7 miles upstream the river's confluence with the Little Tennessee River, show that the subject reach of the Cheoah River has maintained a continuous flow during the period of record (October 1999 through October 2001), with the lowest recorded daily flow of 8.8 cfs and the maximum recorded flow of 1,280 cfs (lowest daily mean flow of 9.1 cfs; maximum daily mean flow of 612 cfs; mean annual flow of 55.8 cfs) (USGS 2002). Bank-full flow/discharge (bank-full stage is the point or elevation on the bank where flooding begins and corresponds to the flow at which channel maintenance is most effective) on the subject reach of the Cheoah River is estimated at 838 cfs, and from October 1999 through July 15, 2002 (USGS 2002), discharges gaged on the Cheoah River have reached or exceeded that volume of stream flow on at least 6 days. Accordingly, while it is true that the construction and operation of the Santeetlah Dam on the Cheoah River have had a significant effect on both the high and low flows in the Cheoah River downstream of the dam, we believe the reach of the Cheoah River that we are designating as critical habitat for the Appalachian elktoe does provide the primary constituent elements, including items 1, 3, and 6 (see ''Primary Constituent Elements'' section below); however, one or more of the constituent elements, though currently present, may be limited or of marginal quality and may require enhancement for full recovery of the species.

Issue 7: We received several comments requesting that additional streams and/or stream reaches be included in the critical habitat designation for the Appalachian elktoe. Specifically, we received requests to include in the critical habitat designation the main stem of the Nolichucky River in Washington and Greene Counties, TN, and the main stem and tributaries of the French Broad River, Swannanoa River, Tulula Creek, and the remainder of the Pigeon River in North Carolina. Four of these respondents stated that the designation of critical habitat should connect populations.

Response: Connecting the surviving populations of the Appalachian elktoe is not feasible because all of the surviving populations are separated from one another by major impoundments. All of the additional areas that we have been requested to include in the critical habitat designation for the Appalachian elktoe are, based on the most recent survey data, currently unoccupied by the species and do not appear to provide suitable habitat for the elktoe. In accordance with the definition of critical habitat (see ''Critical Habitat'' section below), we can only designate unoccupied habitat of the species if, based on the best available information, it is determined that such areas are essential to the conservation of the species.

The recovery plan for the Appalachian elktoe (Service 1996) states that the species will be considered for delisting (recovered) when a total of six distinct, viable populations of the species exist within the species' historical range (with at least one each in the Little Tennessee, French Broad, and Nolichucky River systems) that meet the criteria outlined in the plan. There are currently six known surviving populations of the Appalachian elktoe—the Nolichucky River system

population, Little River population, West Fork Pigeon River/Pigeon River population, Tuckasegee River population, Little Tennessee River population, and the Cheoah River population. The areas that we are designating as critical habitat for the Appalachian elktoe are distributed in different portions of the species' known historical range (three populations in the Little Tennessee River system, two in the French Broad River system, and one in the Nolichucky River system) and contain the habitat elements essential to the life cycle needs of the species as they are currently known. We consider the six areas that we are designating as critical habitat as the most likely sites for focusing conservation efforts for maintaining and recovering the Appalachian elktoe in accordance with the goals outlined in our recovery plan for the species and based on the best scientific information currently available to us concerning the species' known historical range and habitat requirements.

Other than the stream reaches that we are designating as critical habitat, we are not aware of any other streams or stream reaches that provide suitable habitat for the Appalachian elktoe. However, to the extent feasible, we will continue, with the assistance of other Federal, State, and private agencies or organizations, to conduct surveys and research on the species and to evaluate habitat throughout its historical range. Should additional information become available that indicates other areas within the Appalachian elktoe's historical range provide suitable habitat and are essential to the conservation of the species, we may revise the critical habitat designation accordingly. Similarly, if new information indicates any of the areas we have designated should not be included in the critical habitat designation because they no longer meet the definition of critical habitat, we may revise this final critical habitat designation. If, consistent with available funding and program priorities, we elect to revise the designation, we will do so through a subsequent rulemaking.

Issue 8. Several of the comments we received expressed concern about the potential effect the proposed designation of critical habitat could have on the mining industry in Yancey and Mitchell Counties, NC.

Response: For the reasons described below, we do not believe that our designation of critical habitat for the Appalachian elktoe will result in any additional effects on mining activities beyond what already is required. Designated critical habitat receives regulatory protection only under section 7(a)(2) of the Act, which requires that Federal agencies shall, in consultation with the Service, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any species listed as endangered or threatened or result in the destruction or adverse modification of critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to areas designated as critical habitat. Thus, the section 7 requirement does not apply to mining operations for quartz, feldspar, mica, and other minerals carried out on private or other non-Federal land unless a Federal action is involved.

Currently, there are no coal mining operations carried out in Yancey and Mitchell Counties, NC. If subsurface coal mining was proposed, the Office of Surface Mining (OSM) would consult with us under section 7. If surface mining of coal was proposed, the OSM would be guided by a section 7 biological opinion (BO) we issued to them in 1996 for a consultation addressing surface coal mining and reclamation operations under State and Federal regulatory programs adopted pursuant to the Surface Mining Control and Reclamation Act of 1977, as amended, and its implementing regulations. In situations where the potential effects of a proposed new action are consistent with the evaluation and requirements of the prior consultation and BO, no additional consultation by OSM is needed.

We are not aware of any past or current applications by any of the mining companies in Yancey and Mitchell Counties to conduct mining operations in waters or wetlands that may be subject to permits issued by the U.S. Army Corps of Engineers (COE) pursuant to section 404 of the Clean Water Act. If mining in waters or wetlands were proposed, the COE would be required to consult with us if an action by them triggered the section 7(a)(2) requirement of the Act.

Direct discharge into creeks and rivers associated with the processing of minerals requires a National Pollution Discharge Elimination System (NPDES) permit, pursuant to section 402 of the Clean Water Act. Although NPDES permits are issued by the State of North Carolina, the EPA has oversight authority of the State's permitting program. Under the provisions of an interagency Memorandum of Agreement (MOA) adopted by the Service, the EPA, and the National Marine Fisheries Service in 2001, the EPA agreed to consult with us on their decision to delegate to the States the authority to issue Clean Water Act permits. Once a State has been delegated this authority, the State's issuance of such permits is not considered to be a Federal action subject to section 7 consultation. The EPA has approved the State of North Carolina NPDES permit program, and consequently has not found it necessary to consult under section 7 regarding NPDES permits issued by the State of North Carolina for mining discharges. The MOA also provides that if the Service or EPA have concerns that an NPDES permit is likely to have a more than minor detrimental effect on a Federally listed species or critical habitat, a series of steps will be followed to resolve the situation with the State.

Furthermore, regardless of whether critical habitat has been designated, Federal agencies are required by section 7 of the Act to evaluate the direct and indirect effects of their actions and ensure that their actions are not likely to ''jeopardize the continued existence'' of a listed species. Because the Appalachian elktoe is already listed as an endangered species, a Federal agency already is required to consult with us if it determines that a proposed activity within its regulatory authority is likely to adversely affect the Appalachian elktoe, and to insure that the activity will not jeopardize the continued existence of the species. Under the regulations for section 7 consultations (50 CFR 402.02), ''jeopardize the continued existence'' is defined as any activity that would reasonably be expected, directly or indirectly, to appreciably reduce the likelihood of survival and recovery of a listed species in the wild. ''Destruction or adverse modification of critical habitat'' is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of a listed species. Common to the definitions of ''jeopardy'' and ''destruction or adverse modification of critical habitat'' is the likelihood that both the ''survival and recovery'' of the species are appreciably reduced by the proposed action. Because of this common threshold, the restricted range of the Appalachian elktoe, and the fact that all of the areas that we are designating as critical habitat support populations of the species, any action that is likely to destroy or adversely modify critical habitat would also likely result in jeopardy to this species and, therefore, would already be prohibited by the Act through the jeopardy standard regardless of whether the area is designated as critical habitat.

In summary, for the reasons explained above, we do not believe that our

designation of critical habitat for the Appalachian elktoe will have any regulatory effect on mining activities that have no Federal involvement, and we do not believe the designation of critical habitat will have any additional regulatory effect on mining activities that require Federal permits beyond what already is required as a result of the listing of the species.

Issue 9. Three respondents stated that the designation of critical habitat ''would, and will put a stop to all agriculture in the area; this could include the family garden.'' The same respondents also stated that the designation of critical habitat would adversely affect apple growers and Christmas tree farmers.

Response: As stated above, the regulatory requirements associated with critical habitat do not apply to any agricultural activities, including apple orchards, Christmas tree farms, or other tree farming, row crop farming, livestock farming, or any other activity carried out on private land that does not require and/or involve a Federal permit or Federal funding. Generally, the only Federal regulations associated with agricultural activities with the potential to trigger the section 7 consultation requirements of the Act involve the use of pesticides and herbicides. The EPA consults with us on the registration of certain pesticides and herbicides that have been identified by the EPA to have the potential to harm listed species. In such cases, the potential effects to listed species and their habitat are addressed through warnings and restrictions placed on the label of the subject pesticides and herbicides (*i.e.*, restrictions on application rates, application methods, frequency of application, disposal of containers, *etc.*). Further, as explained in our response to Issue 8, above, section 7 consultations on the registration of pesticides or herbicides, or on any other Federal activity with the potential to adversely affect the Appalachian elktoe or any federally listed species, is required regardless of whether critical habitat has been designated. For these reasons, we do not believe our designation of critical habitat for the Appalachian elktoe will result in any additional effects on agriculture beyond existing requirements related to the listing of the species.

Issue 10: Several respondents stated that the designation of critical habitat will infringe on private property rights, and one respondent stated that the designation will jeopardize the private property rights of a landowner even when that landowner is not in any way contributing to the endangerment of an endangered species.

Response: As explained in the response to Issues 8 and 9, the only regulatory consequence of the designation of critical habitat is the requirement under section 7 of the Act for Federal agencies to insure, in consultation with us, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. With regard to critical habitat, this requirement has no regulatory impact on a private landowner who takes action on his or her land that does not involve Federal funding or authorization. Because the Appalachian elktoe already is listed as endangered, Federal agencies already are required to consult with us on any of their actions that are likely to adversely affect the species and to insure that their actions do not jeopardize the species' continued existence, regardless of whether critical habitat has been designated. Therefore, we do not believe the designation of critical habitat for the Appalachian elktoe will result in any significant additional regulatory burden on landowners or affect the use of their property.

Issue 11: Several respondents stated that they agreed with the Service's original determination, made when the species was listed, that the designation of critical habitat was not prudent for the Appalachian elktoe. One of these respondents expressed concern that the designation of critical habitat and the associated publication of maps of critical habitat could increase the threat of collecting of the Appalachian elktoe and that it would be far safer for the Appalachian elktoe if critical habitat were not designated for the species.

Response: Section 4(a)(3)(A) of the Act requires that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. The regulations state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity and the identification of critical habitat can be expected to increase the degree of such threat to the species or (2) such designation of critical habitat would not be beneficial to the species (*see ''Critical Habitat''* section below).

When we listed the Appalachian elktoe as endangered on November 23, 1994 (59 FR 60324), we concurrently determined that the designation of critical habitat was not prudent because such a designation would not be beneficial to the species. In addition, we expressed our concern that the rarity and uniqueness of the Appalachian elktoe could generate interest in the species and that the publicity associated with the designation of critical habitat, together with the publication of maps and descriptions of critical habitat, could increase the vulnerability of the species to collection, vandalism, or other disturbance. Although we did not base our ''not prudent'' determination on an increased threat to the Appalachian elktoe, we did consider the potential increased threat to the species from critical habitat designation in making our determination that the designation of critical habitat was not prudent for the Appalachian elktoe because it would not benefit the species.

In the last few years, court decisions have overturned our determinations regarding a variety of species, concluding that the designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior,* 113 F. 3d 1121 [9th Cir. 1997]; *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 [D. Hawaii 1998]).

In *Conservation Council of Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280, 1284 (D. Hawaii 1998), the United States District Court for the District of Hawaii ruled that the Service could not rely on the ''increased threat'' rationale for a ''not prudent'' determination without evidence of a specific threat to the species at issue or a similarly situated species. In *Natural Resources Defense Council* v. *U.S. Department of the Interior,* 113 F. 3d 1121, 1125 (9th Cir. 1997), the United States Court of Appeals for the Ninth Circuit ruled that, in order to invoke the ''increased threat rationale'' the Service must balance the threat against the benefit to the species of designating critical habitat. The recent court decisions have stated that, in the absence of a finding that the designation of critical habitat would increase threats to a species, if there are any benefits to critical habitat designation (*e.g.*, an educational or informational benefit that can assist in the conservation of the species), then a prudent finding is warranted and the existence of another type of protection, even if potentially greater, does not justify a not prudent finding.

At this time we do not have documented evidence for the collection, trade, vandalism, or other unauthorized human disturbance specific to the Appalachian elktoe, or a similarly situated species. Consequently, we cannot make a ''not prudent'' determination for the designation of critical habitat for the Appalachian

elktoe on the basis of an expected increase in the degree of threat to the species from collecting, vandalism, or other take as a result of the designation of critical habitat. Because the designation of critical habitat may provide some conservation benefit to the Appalachian elktoe by providing additional information about its habitat requirements to individuals, local and State governments, and others interested in assisting in conservation efforts for the species, we cannot support a determination that the designation of critical habitat would not be beneficial to the species.

Issue 12: One respondent requested information concerning the steps taken to determine the status of the Appalachian elktoe and ''who is using, has used, or has stated intent to use it (the species' status) for what stated purpose.''

Response: In listing the Appalachian elktoe as an endangered species (59 FR 60324) and determining the areas we consider essential for the conservation of the species (the areas we are designating as critical habitat), we used the best scientific and commercial information available to us concerning the species' historical range, present range, life history and habitat requirements, and factors that have contributed to its decline and those that pose a threat to its continued existence. This information was obtained from a variety of sources, including surveys and studies conducted by State, Federal, university, and private biologists and researchers and a review of published and unpublished literature. A summary of this information and the sources used is provided in the recovery plan for the Appalachian elktoe (Service 1996) and in the *''Background''* sections of the final rule listing the Appalachian elktoe as an endangered species (59 FR 60324), the proposed rule to designate critical habitat for the Appalachian elktoe (66 FR 9540), and in this final rule designating critical habitat for the Appalachian elktoe. The steps taken in compiling, analyzing, and disseminating this information, as well as the dates of the steps taken, are outlined in the ''Previous Federal Actions'' section of the final rule listing the Appalachian elktoe as endangered, the proposed rule to designate critical habitat for the Appalachian elktoe, and this final rule.

We cannot speak for other agencies, organizations, or individuals, but our purpose and intent in listing the Appalachian elktoe as an endangered species and in designating critical habitat for the species is to fulfill our obligations and responsibilities under the Act and to assist other agencies, organizations, and individuals in fulfilling their obligations under the Act.

In enacting the Act, Congress declared that species of fish, wildlife, and plants in the United States in danger of, or threatened with, extinction are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people. The Service and the National Marine Fisheries Service are the two primary agencies responsible for administering the Act. Our purposes and responsibilities through the Act are to identify endangered and threatened species, protect these species, and provide a means to conserve their ecosystems.

Issue 13: Several respondents questioned the economic benefits of the designation of critical habitat for the Appalachian elktoe mentioned by supporters of the proposed designation. Three of these respondents specifically mentioned a citation of the potential economic benefit of the designation to ''mussel harvest in the State of Tennessee.''

Response: There is little disagreement in the published economic literature that real social welfare benefits can result from the conservation and recovery of endangered or threatened species. Such benefits have also been ascribed to the preservation of open space and biodiversity, both of which are associated with species conservation. Likewise, a local and regional economy can benefit from the preservation of healthy populations of endangered and threatened species and the habitat on which these species depend. However, these benefits would be most closely associated with the listing of a species as endangered or threatened, because listing serves to provide the majority of the protection and conservation benefits afforded under the Act.

With regard to the comments concerning ''mussel harvest,'' we have not identified, either in the proposed rule to designate critical habitat for the Appalachian elktoe or in the draft economic analysis of the proposed designation of critical habitat for the Appalachian elktoe (or any other document associated with the proposed designation), the potential benefit to the commercial harvest of freshwater mussels that may be derived from the protection of Appalachian elktoe habitat. While certain species of freshwater mussels are harvested in some southeastern States (including some areas in western Tennessee) for their shells for use in the cultured pearl industry (plugs are cut from the shells, formed into beads, and inserted into marine oysters to assist in the formation of pearls), the shell of the Appalachian elktoe is not thick enough to be of value to this industry. Furthermore, no mussel species and no areas where their collection is permitted (the nearest river reach where the harvesting of mussels for the cultured pearl industry is allowed is the Tennessee River in northern Alabama) occur in close enough proximity to the areas that support the Appalachian elktoe to receive benefit from water and habitat quality protection that may be attributable to measures implemented for the protection of the Appalachian elktoe and its habitat.

Issue 14: One respondent questioned why a public hearing on the proposed designation of critical habitat was not held in the Nolichucky River watershed in Mitchell County or Yancey County, NC.

Response: Our regulations require that we hold at least one public hearing, if a public hearing is requested. Because the majority of the comments we received were from organizations and individuals in Tennessee and because a portion of the Nolichucky River was the only area in Tennessee proposed for the designation of critical habitat for the Appalachian elktoe, we elected to hold one of the hearings in Erwin, TN. Erwin is within the Nolichucky River system and is located in Unicoi County, TN, immediately across the State line from Mitchell and Yancey Counties, NC. We elected to hold the second public hearing in Bryson City, Swain County, NC, as a central location to cover the portions of the Cheoah River (Graham County), Little Tennessee River (Swain and Macon Counties), Tuckasegee River (Swain and Jackson Counties), and West Fork Pigeon River and Pigeon River (Haywood County) being proposed for the designation of critical habitat. Also, following the public hearings, at the request of the County Manager, Yancey County, NC, we attended a meeting of the Yancey County Board of Commissioners where we gave a presentation about the proposed designation of critical habitat for the Appalachian elktoe to the commissioners and the public in attendance.

Issue 15: We received several comments addressing the economic and demographic data for Mitchell County, NC, that were presented in the draft economic analysis.

Response: In response to the information received, we have revised the data concerning the human population, population growth, and per capita income for Mitchell County, NC,

in the addendum to the economic analysis of critical habitat designation for the Appalachian elktoe.

Issue 16: Several of the respondents stated that the draft economic analysis failed to adequately assess the potential economic benefits of the designation of critical habitat for the Appalachian elktoe.

Response: In the addendum to the draft economic analysis, we have provided additional information concerning, and an analysis of, the potential economic benefits associated with measures implemented for the protection of water and habitat quality that may occur and be attributable to the effects of future section 7 consultations under the Act for the Appalachian elktoe and its designated critical habitat. However, it is not possible to fully describe and accurately quantify all the benefits of potential future section 7 consultations in the context of the economic analysis. And, as stated in the draft economic analysis, we believe the benefits are best expressed in biological terms that can be weighed against the potential costs of the rulemaking.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Pursuant to regulations at 50 CFR 424.12(e), areas outside the geographical area presently occupied by the species shall be designated as critical habitat only when a designation limited to its present range would be inadequate to ensure the conservation of the species. ''Conservation'' is defined in section 3(3) of the Act as the use of all methods and procedures necessary to bring endangered or threatened species to the point where listing under the Act is no longer necessary. Regulations under 50 CFR 424.02(j) define ''special management considerations or protection'' to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 of the Act requires that we designate critical habitat for a species at the time of listing, to the extent such habitat is determinable. We are required to designate those areas we know to be critical habitat, based on the best information available to us. When designating critical habitat, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available or what areas may become essential over time.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, unless the best available scientific data demonstrate that the conservation needs of the species cannot be met within currently occupied areas, we will not designate critical habitat in areas outside the geographical area presently occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by us represent the best scientific and commercial data available. This policy requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species and the recovery plan, if one has been adopted by us. Additional information may be obtained from articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments or other unpublished materials (*i.e.*, gray literature), and expert opinions.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of the designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that the designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the conservation of the species. For these reasons, it should be understood that critical habitat designations do not signal that habitat outside the designation is unimportant or that it may not be necessary for the conservation of the species. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Section 4(b)(2) of the Act requires us to base critical habitat designations on the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation if we determine that the benefits of excluding those areas outweigh the benefits of including the areas within the critical habitat, provided the exclusion will not result in the extinction of the species.

Methods

As required by section 4(b)(2) of the Act and regulations at 50 CFR 424.12, we used the best scientific data available to determine areas that contain the physical and biological features that are essential for the conservation of the Appalachian elktoe. This included information from the listing package for the species, the recovery plan, scientific publications, recent surveys and reports, and conversations with other Federal, State, and private biologists and researchers familiar with the species.

The areas of critical habitat described below constitute our best assessment of the areas needed for the conservation of

the Appalachian elktoe in accordance with the goals outlined in our recovery plan for the species (Service 1996) and are based on the best scientific information currently available to us concerning the species' known present and historical range, habitat, biology, and threats. The recovery plan for the Appalachian elktoe states that the species will be considered for delisting when a total of six distinct, viable populations exist and other criteria outlined in the plan are met (Service 1996). Based on the most recent survey data for the Appalachian elktoe, there are currently six surviving populations of the species (*see* ''*Background*'' section above). The areas in the six units that we are designating as critical habitat for the species include habitat for each of these populations. All of the areas we are designating as critical habitat are within what we believe to be the geographical area occupied by the Appalachian elktoe, include all known surviving occurrences of the species, are essential for the conservation of the species, and provide for the species' essential life cycle needs. These designated areas are distributed throughout the Appalachian elktoe's range, with at least one occurring in each of the Little Tennessee, French Broad, and Nolichucky River systems. In addition, given the threats to the species' habitat discussed in the final listing rule (59 FR 60324) and the recovery plan for the species (Service 1996), and summarized in the ''Background'' section above, we believe these areas may need special management consideration or protection.

We will continue, with the assistance of other Federal, State, and private researchers, to conduct surveys and research on the species and its habitat. If new information becomes available indicating that other areas within the Appalachian elktoe's historical range are essential to the conservation of the species and provide for the essential life cycle needs of the species, we will revise the critical habitat designation for the Appalachian elktoe accordingly.

Primary Constituent Elements

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These physical and biological features include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distribution of a species (50 CFR 424.12(b)).

When considering areas for designation as critical habitat, we are required to focus on the principal biological and physical constituent elements within the defined area that are essential to the conservation of the species (50 CFR 424.12 (b)). Although additional information is needed to better define the habitat requirements of the Appalachian elktoe, particularly the microhabitat requirements, based on the best available information concerning the habitat and life history of the Appalachian elktoe (*see* ''*Background*'' section above), the primary constituent elements essential for the conservation of the Appalachian elktoe are:

1. Permanent, flowing, cool, clean water;
2. Geomorphically stable stream channels and banks;
3. Pool, riffle, and run sequences within the channel;
4. Stable sand, gravel, cobble, and boulder or bedrock substrates with no more than low amounts of fine sediment;
5. Moderate to high stream gradient;
6. Periodic natural flooding; and
7. Fish hosts, with adequate living, foraging, and spawning areas for them.

Critical Habitat Designation

The areas designated as critical habitat for the Appalachian elktoe total approximately 231.1 km (144.3 mi) of rivers. Table 1 summarizes the location and extent of designated critical habitat. All of the designated areas require special management considerations to ensure their contribution to the conservation of the Appalachian elktoe.

TABLE 1.—APPROXIMATE LENGTHS OF STREAMS DESIGNATED AS CRITICAL HABITAT FOR THE APPALACHIAN ELKTOE

State	County	Unit and stream	Approximate length in kilometers (miles)
North Carolina	Macon and Swain.	Unit 1–Little Tennessee River.	38.5 (24)
	Jackson and Swain.	Unit 2–Tuckasegee River.	41.6 (26)
	Graham	Unit 3–Cheoah River.	14.6 (9.1)
	Transylvania	Unit 4–Little River.	7.5 (4.7)
	Haywood	Unit 5–West Fork Pigeon River and Pigeon River.	17.8 (11.1)
	Yancey	Unit 6–South Toe River.	22.6 (14.1)
	Yancey	Unit 6–Cane River.	26.4 (16.5)
	Yancey and Mitchell.	Unit 6–North Toe River.	5.9 (3.7)
	Yancey and Mitchell.	Unit 6–Toe River	34.6 (21.6)

TABLE 1.—APPROXIMATE LENGTHS OF STREAMS DESIGNATED AS CRITICAL HABITAT FOR THE APPALACHIAN ELKTOE—Continued

State	County	Unit and stream	Approximate length in kilometers (miles)
North Carolina and Tennessee	Yancey and Mitchell (NC) and Unicoi (TN).	Unit 6– Nolichucky River.	21.6 (13.5)

The lateral extent of designated critical habitat within units 1 to 6 is the ordinary high water line on each bank. As defined in 33 CFR 329.11, the ordinary high water line on non-tidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

We are designating the following areas as critical habitat for the Appalachian elktoe:

Unit 1. Macon County and Swain County, NC

Unit 1 encompasses approximately 38.5 km (24 mi) of the main stem of the Little Tennessee River, from the Lake Emory Dam at Franklin, Macon County, NC, downstream to the backwaters of Fontana Reservoir in Swain County, NC. This unit is part of the currently occupied range of the Appalachian elktoe and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area supports one of the only three known surviving populations of the Appalachian elktoe in the Little Tennessee River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Appalachian elktoe (Service 1996), protection of this unit is essential to the conservation of the species.

Unit 2. Jackson County and Swain County, NC

Unit 2 encompasses approximately 41.6 km (26 mi) of the main stem of the Tuckasegee River (Little Tennessee River system), from the N.C. State Route 1002 Bridge in Cullowhee, Jackson County, NC, downstream to the N.C. Highway 19 Bridge, north of Bryson City, Swain County, NC. This unit is part of the currently occupied range of the Appalachian elktoe and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area supports one of the only three known surviving populations of the Appalachian elktoe in the Little Tennessee River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Appalachian elktoe (Service 1996), protection of this unit is essential to the conservation of the species.

Unit 3. Graham County, NC

Unit 3 encompasses approximately 14.6 km (9.1 mi) of the main stem of the Cheoah River (Little Tennessee River system), from the Santeetlah Dam, downstream to its confluence with the Little Tennessee River. This unit is part of the currently occupied range of the Appalachian elktoe and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area supports one of the only three known surviving populations of the Appalachian elktoe in the Little Tennessee River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Appalachian elktoe (Service 1996), protection of this unit is essential to the conservation of the species.

Unit 4. Transylvania County, NC

Unit 4 encompasses approximately 7.5 km (4.7 mi) of the main stem of the Little River (French Broad River system), from the Cascade Lake Power Plant, downstream to its confluence with the French Broad River. This unit is part of the currently occupied range of the Appalachian elktoe and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area supports one of the only two known surviving populations of the Appalachian elktoe in the French Broad River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Appalachian elktoe (Service 1996), protection of this unit is essential to the conservation of the species.

Unit 5. Haywood County, NC

Unit 5 encompasses approximately 17.8 km (11.1 mi) of the main stem of the West Fork Pigeon River (French Broad River system), from the confluence of the Little East Fork Pigeon River, downstream to the confluence of the East Fork Pigeon River, and the main stem of the Pigeon River, from the confluence of the West Fork Pigeon River and the East Fork Pigeon River, downstream to the N.C. Highway 215 Bridge crossing, south of Canton, NC. This unit is part of the currently occupied range of the Appalachian elktoe and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area supports one of the only two known surviving populations of the Appalachian elktoe in the French Broad River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Appalachian elktoe (Service 1996), protection of this unit is essential to the conservation of the species.

Unit 6. Yancey County and Mitchell County, NC, and Unicoi County, TN

Unit 6 encompasses approximately 5.9 km (3.7 mi) of the main stem of the North Toe River, Yancey and Mitchell Counties, NC, from the confluence of Big Crabtree Creek, downstream to the confluence of the South Toe River; approximately 22.6 km (14.1 mi) of the main stem of the South Toe River, Yancey County, NC, from the N.C. State Route 1152 Bridge, downstream to its confluence with the North Toe River; approximately 34.6 km (21.6 mi) of the main stem of the Toe River, Yancey and Mitchell Counties, NC, from the confluence of the North Toe River and the South Toe River, downstream to the confluence of the Cane River; approximately 26.4 km (16.5 mi) of the

main stem of the Cane River, Yancey County, NC, from the N.C. State Route 1381 Bridge, downstream to its confluence with the Toe River; and approximately 21.6 km (13.5 mi) of the main stem of the Nolichucky River from the confluence of the Toe River and the Cane River in Yancey County and Mitchell County, NC, downstream to the U.S. Highway 23/19W Bridge southwest of Erwin, Unicoi County, TN. This unit is part of the currently occupied range of the Appalachian elktoe and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. The area supports the only two known surviving populations of the Appalachian elktoe in the Nolichucky River system. Based on our consideration of the best available information, including the recovery goals and criteria outlined in the recovery plan for the Appalachian elktoe (Service 1996), protection of this unit is essential to the conservation of the species.

Land Ownership

Of the areas that we are designating as critical habitat for the Appalachian elktoe, approximately 67 percent—14.4 km (9.0 mi)—of the Nolichucky River is bordered by the Pisgah National Forest in North Carolina and the Cherokee National Forest in Tennessee; 88 percent—12.8 km (8.0 mi)—of the Cheoah River is bordered by the Nantahala National Forest; and a small percentage of the Tuckasegee River is bordered by land belonging to The Eastern Band of Cherokee Indians. The remaining areas that we are designating as critical habitat for the Appalachian elktoe, with the exception of State road and highway rights-of-way, are bordered by land under private ownership.

Effects of Critical Habitat Designation

Designating critical habitat does not, in itself, lead to the recovery of a listed species. The designation does not establish a reserve, create a management plan, establish numerical population goals, prescribe specific management practices (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and management plans and through section 7 consultations and section 10 permits.

Critical habitat receives regulatory protection only under section 7 of the Act through the prohibition against the destruction or adverse modification of designated critical habitat by actions carried out, funded, or authorized by a Federal agency. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to land designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal land that do not involve a Federal action, critical habitat designation would not afford any protection under the Act against such activities. Accordingly, the designation of critical habitat will not have any regulatory effect on private or State activities unless those activities require a Federal permit, authorization, or funding.

Section 7(a)(2) of the Act and regulations at 50 CFR 402.10 require Federal agencies to ensure, in consultation with us, that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of designated critical habitat. ''Destruction or adverse modification'' is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of the listed species for which critical habitat was designated. Such alternations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical (50 CFR 402.02).

Activities on Federal land, activities on private or State land carried out by a Federal agency, or activities receiving funding or requiring a permit from a Federal agency that may affect the designated critical habitat of the Appalachian elktoe will require consultation under section 7 of the Act. However, pursuant to section 7 of the Act and the related consultation regulations, Federal agencies also are required to consult with us on any action that may affect a listed species and to ensure that actions they authorize, fund, or carry out do not jeopardize the continued existence of listed species. Activities that jeopardize listed species are defined as actions that ''directly or indirectly, reduce appreciably the likelihood of both the survival and recovery of a listed species' (50 CFR 402.02). Federal agencies are prohibited from jeopardizing listed species through their actions, regardless of whether critical habitat has been designated for the species.

Common to the definitions of both ''jeopardy'' and ''destruction or adverse modification of critical habitat'' is the concept that the likelihood of both survival and recovery of the species are appreciably reduced by the action. Because of the small size of the surviving populations of the Appalachian elktoe, the species' restricted range, and the limited amount of suitable habitat available to the species, and because all of the units that we are designating as critical habitat for the Appalachian elktoe currently support populations of the species, actions that are likely to destroy or adversely modify the Appalachian elktoe's critical habitat are also likely to jeopardize this species. Accordingly, even though Federal agencies will be required to evaluate the potential effects of their actions on any habitat that is designated as critical habitat for the Appalachian elktoe, this designation would not be likely to change the outcome of section 7 consultations.

If, through section 7 consultation, a Federal agency determines that an action or activity they are proposing may adversely affect a listed species and/or designated critical habitat, we will issue a biological opinion determining whether the effects of the action are likely to jeopardize the continued existence of the species and/or destroy or adversely modify designated critical habitat. If we issue a biological opinion concluding that the action is likely to jeopardize the species or destroy or adversely modify designated critical habitat, we will also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined as alternative actions that can be implemented in a manner that is consistent with the intended purpose of the action, that is consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that the Director of the Service believes would avoid jeopardizing the species' continued existence and/or the destruction or adverse modification of designated critical habitat.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may destroy or adversely modify such habitat or may be affected by such designation. Activities that may destroy or adversely modify critical habitat are, as discussed above, those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the Appalachian elktoe is appreciably diminished. This may include any activity, regardless of the location of the activity in relation to designated critical

habitat, that would significantly alter the natural flow regime, channel morphology or geometry, or water chemistry or temperature of any of the six designated critical habitat units, as described by the primary constituent elements, or any activity that could result in the significant discharge or deposition of sediment, excessive nutrients, or other organic or chemical pollutants into any of the six designated critical habitat units. Such Federal activities include (but are not limited to) carrying out or issuing permits, authorizations, or funding for reservoir construction; stream and/or stream-bank alterations; wastewater facility development; hydroelectric facility construction and operation; pesticide/herbicide applications; forestry operations; and road, bridge, and utility construction. These same activities also have the potential to jeopardize the continued existence of the Appalachian elktoe, and Federal agencies are already required to consult with us on these types of activities, or any other activity, that may affect the species.

Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits, or questions regarding whether specific activities will constitute adverse modification of critical habitat, may be addressed to the U.S. Fish and Wildlife Service, Asheville Field Office (*see* **ADDRESSES** section).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas as critical habitat upon reaching a determination that the benefits of such exclusion outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Following publication of the proposed critical habitat designation, a draft economic analysis was prepared to estimate the potential economic effect of the designation. The draft analysis was made available for public review on May 16, 2002 (67 FR 34893). We accepted comments on the draft analysis until July 1, 2002. Following the close of the comment period on the draft economic analysis, a final addendum was completed that incorporated public comments on the draft analysis.

Our draft economic analysis and final addendum evaluated the potential future effects associated with the listing of the Appalachian elktoe as an endangered species under the Act, as well as any potential effect of the designation of critical habitat above and beyond those regulatory and economic impacts associated with the listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a ''without critical habitat'' baseline and compared it to a ''with critical habitat'' scenario. The ''without critical habitat'' baseline represented the current and expected economic activity under all modifications prior to the critical habitat designation, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the designation of critical habitat. The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting beneficial costs associated with critical habitat, including educational benefits.

The majority of future section 7 consultations associated with the areas being designated as critical habitat for the Appalachian elktoe are likely to address road and bridge construction, Federal forestry activities, residential development requiring a Federal permit, and hydropower relicensings. The draft analysis estimated that, over a 10-year period, approximately four formal consultations and 71 to 89 informal consultations will occur on projects with the potential to affect the Appalachian elktoe and its proposed critical habitat. In addition, the draft analysis estimated that we will provide technical assistance to various parties on 99 to 107 occasions. Our draft analysis assumed that many of the potential future consultations are likely to result in Service recommendations for certain types of project modifications. Based on our draft analysis, we concluded that costs associated with future section 7 consultations involving the Appalachian elktoe and its designated critical habitat could potentially range from $1.943 to $5.121 million over the next 10 years. However, the draft economic analysis indicates that the listing of the Appalachian elktoe and the resultant Federal responsibility to avoid projects that would jeopardize the continued existence of the species are likely to trigger these impacts regardless of whether critical habitat is designated.

A detailed discussion of our analysis is contained in the Draft Economic Analysis of Proposed Critical Habitat Designation for the Appalachian Elktoe (April 2002) and the Final Addendum to the Economic Analysis of Critical Habitat Designation for the Appalachian Elktoe (August 2002). Both documents are included in the supporting documentation for this rulemaking and are available for inspection at the Asheville Field Office (*see* **ADDRESSES**).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB), as OMB determined that this rule may raise novel legal or policy issues. The Service prepared an economic analysis of this action. The Service used this analysis to meet the requirement of section 4(b)(2) of the Endangered Species Act to determine the economic consequences of designating the specific areas as critical habitat. The draft economic analysis was made available for public comment, and we considered those comments during the preparation of this rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this rule designating critical habitat for the

Appalachian elktoe will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale for this assertion.

According to the Small Business Administration (*http://www.sba.gov/size/*), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. The designation of critical habitat has the potential to affect only activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are not likely to have any Federal involvement; therefore, they will not be affected by the critical habitat designation. Activities with Federal involvement that may require consultation regarding the Appalachian elktoe and its critical habitat include: regulation of activities affecting waters of the United States by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act; forestry activities carried out by the U.S. Forest Service; and road construction, maintenance, and right-of-way designation authorized, funded, or carried out by a Federal agency. As required under section 4(b)(2) of the Act, we conducted an analysis of the potential economic impacts of this critical habitat designation. In the analysis, we found that future section 7 consultations resulting from the listing of the Appalachian elktoe and the proposed designation of critical habitat could potentially impose total economic costs for consultations and modifications to projects ranging between approximately $1.943 and $5.121 million over a 10-year period.

In determining whether this rule could ''significantly affect a substantial number of small entities,'' the economic analysis first determined whether critical habitat could potentially affect a ''substantial number'' of small entities in counties supporting critical habitat areas. While the SBREFA does not explicitly define ''substantial number,'' the Small Business Administration, as well as other Federal agencies, has interpreted this to represent an impact on 20 percent or greater of the number of small entities in any industry. Based on the past consultation history of the Appalachian elktoe, the economic analysis anticipated that future section 7 consultations could potentially affect small businesses associated with residential development. To be conservative (*i.e.*, more likely to overstate impacts than understate them), the economic analysis assumed that a unique company will undertake each of the consultations forecasted in a given year; thus, the number of businesses affected is equal to the total annual number of consultations projected in the economic analysis.

Based on our analysis, the number of small businesses estimated to be impacted by future section 7 consultations is approximately 4.8 percent of the small businesses in the affected counties. This finding is based on the extremely conservative assumption that the potential universe of affected entities includes only those within the counties in which critical habitat units are located and attributes all of the effects of section 7 consultation on these activities solely to the critical habitat designation, even though these effects would likely occur with or without the designation of critical habitat for the Appalachian elktoe due to the listing of the species. Because these estimates are less than the 20 percent threshold that would be considered ''substantial,'' the analysis provided a basis for concluding that this designation will not affect a substantial number of small entities as a result of the designation of critical habitat for the Appalachian elktoe. The draft Economic Analysis and the final Addendum contain the factual bases for this certification and contain a complete analysis of the potential economic effects of this designation. Copies of these documents are in the supporting record for the rulemaking and are available at the Asheville Field Office (*see* **ADDRESSES** section).

In summary, we have considered whether this rule could result in significant economic effects on a substantial number of small entities. We have determined, for the above reasons, that it will not affect a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for the Appalachian elktoe will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

OMB's Office of Information and Regulatory Affairs has determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final designation of critical habitat: (1) Does not have an annual effect on the economy of $100 million; (2) will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local governmental agencies; or geographic regions; and (3) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed in the economic analysis, future potential section 7 costs in areas that we are designating as critical habitat for the Appalachian elktoe are anticipated to have a total estimated economic effect ranging between approximately $1.943 and $5.121 million over a 10-year period. Furthermore, because all the areas that we are designating as critical habitat in this rule currently support populations of the Appalachian elktoe, we would consult on the same range of activities in the absence of this critical habitat designation, and the above costs are most appropriately attributable to the section 7 jeopardy provisions of the Act due to the listing of the species (*see* **EFFECTS OF CRITICAL HABITAT** section).

Proposed and final rules designating critical habitat for listed species are issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises will not be affected by the final rule designating critical habitat for this species. Therefore, we anticipate that this final rule will not place significant additional burdens on any entity.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, which applies to ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' In order to ensure that Federal agencies ''appropriately weigh and consider the effects of the Federal Government's regulations on the supply, distribution, and use of energy,'' the President has directed agencies to prepare and submit to the OMB's Office of Information and Regulatory Affairs a ''Statement of Energy Effects'' for their ''significant energy actions.'' The OMB has provided guidance for implementing this executive order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared without the regulatory action under consideration:

Reductions in crude oil supply in excess of 10,000 barrels per day;

Reductions in fuel production in excess of 4,000 barrels per day;

Reductions in coal production in excess of 5 million tons per year;

Reductions in natural gas production in excess of 25 million mcf per day;

Reductions in electricity production in excess of 1 billion kilowatts per year or in excess of 500 megawatts of installed capacity;

Increases in energy use required by the regulatory action that exceed the thresholds above;

Increases in the cost of energy production in excess of one percent;

Increases in the cost of energy distribution in excess of one percent; or

Other similarly adverse outcomes.

There are a total of eight hydropower projects located within, upstream, and downstream of critical habitat Units 1, 2, and 3. Accordingly, two of the criteria for assessing potential significant effect to energy supply, distribution, or use are relevant to this analysis and were assessed in the final addendum to the economic analysis—(1) reductions in electricity production in excess of 1 billion kilowatts per year or in excess of 500 megawatts of installed capacity and—(2) increases in the cost of energy production in excess of one percent.

Nantahala Power and Light, a subsidiary of Duke Power, owns one hydropower project—the Franklin Dam, on the main stem of the Little Tennessee River, immediately upstream of Unit 1—and four projects within the Tuckasegee River system—the Dillsboro Dam that occurs within Unit 2, the Bryson Dam that occurs downstream on Unit 2, and the West Fork Project and East Fork Project (the East Fork and West Fork hydropower projects include multiple hydropower dams) that occur upstream of Unit 2. Tapoco-APGI owns two dams—the Santeetlah Dam on the Cheoah River, immediately upstream of Unit 3, and the Cheoah Dam on the Little Tennessee River, located downstream of Unit 3. In addition, the TVA operates the Fontana Dam on the Little Tennessee River downstream of Unit 1.

The combined installed capacity for all eight hydropower projects is 445.48 MW (445,480 KW). Therefore, even when viewed in the context of a worst-case scenario, in which implementation of section 7 of the Act results in significant operational changes of all eight hydropower projects, the total capacity is 445.48 MW (445,480 KW) of hydroelectricity, so the impact on these hydropower facilities could not exceed the 500 MW (500,000 KW) threshold.

In order to determine whether implementation of section 7 of the Act will result in a significant increase in the cost of energy production, this analysis considered the maximum possible increase in energy production costs under the same scenario above where the implementation of section 7 causes significant operational changes to all eight hydropower facilities. Natural gas represents the next cheapest fuel source for generating electricity (hydropower is the cheapest), but also accounts for the smallest portion of electricity production, at roughly two percent. Nuclear-generated electricity accounts for approximately 33 percent of overall generation and represents the most expensive fuel source. Electricity generated by coal-fired facilities makes up the largest portion of electricity generated in North Carolina and Tennessee, accounting for approximately 66 percent of overall production. Accordingly, professional judgment suggests that coal would be the likely fuel substitute to make up for any decrease in hydroelectric energy production. The final addendum to the economic analysis determined that if even all current hydroelectric energy production from the eight hydroelectric projects were to cease, coal-fired facilities would experience approximately $72,244,000 in additional costs to meet this energy demand, which represents approximately 0.70 percent increase in production costs.

Therefore, even in the worst case scenario, implementation of section 7 for the Appalachian elktoe will not result in a ''reduction in electricity production in excess of 500 megawatts of installed capacity'' or an ''increase in the cost of energy production in excess of one percent.'' Consequently, this rule will not have a ''significant adverse effect'' on the supply, distribution, or use of energy, and no ''Statement of Energy Effects'' is required. Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs using Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated in areas of occupied designated critical habitat.

b. This rule will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the takings implications of designating approximately 148.4 km (92.2 mi) of streams in North Carolina and Tennessee in six units of critical habitat for the Appalachian elktoe. Based on our consideration of the economic analysis and other pertinent information, this rule does not have significant takings implications, and a takings implication assessment is not required. This rule will not ''take'' private property. The only regulatory consequence of the designation of critical habitat is that Federal agencies must consult with us before undertaking actions, issuing permits, or providing funding for activities that might destroy or adversely modify critical habitat. This regulation has no regulatory impact on a private landowner who takes action on his or her land that does not involve Federal funding or authorization. Because the Appalachian elktoe is already listed as endangered, Federal agencies are already required to consult with us on any of their actions that are likely to adversely affect the species and to ensure that their actions do not jeopardize the species' continued existence regardless of whether critical habitat has been designated. Therefore,

we do not believe the designation of critical habitat for the Appalachian elktoe will result in any significant additional regulatory burden on landowners or affect the use of property, whether private or Federal.

Furthermore, only those activities with Federal involvement that are likely to adversely affect a listed species or result in the destruction or adverse modification of critical habitat require consultation under section 7 of the Act. Landowners proposing or carrying out activities, even with Federal involvement, are not affected by the consultation requirements under section 7 of the Act, or any other provisions of the Act, if their activities are not in any way adversely affecting a listed species or designated critical habitat.

This rule will not increase or decrease the current restrictions concerning taking of the Appalachian elktoe on private property as defined in section 9 of the Act and its implementing regulations (50 CFR 17.31). Additionally, critical habitat designation does not preclude the development of habitat conservation plans and the issuance of incidental take permits. Any landowner in areas that are included in the designated critical habitat will continue to have the opportunity to use his or her property in ways consistent with the survival of the Appalachian elktoe.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism Assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated the development of this critical habitat designation with, appropriate State natural resources agencies in North Carolina and Tennessee. We will continue to coordinate any future changes in the designation of critical habitat for the Appalachian elktoe with the appropriate State agencies. The designation of critical habitat for the Appalachian elktoe imposes few, if any, additional restrictions to those currently in place and therefore has little incremental impact on State and local governments and their activities. The designation may provide some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While this does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning rather than having to wait for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act of 1973, as amended. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs that are essential for the conservation of the Appalachian elktoe. We have made every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burdens, and is clearly written so that the risk of litigation is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the OMB under the Paperwork Reduction Act. This rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized tribes on a government-to-government basis. The Cherokee Indian Reservation occurs in the watershed of the reach of the Tuckasegee River (Unit 2) that we are designating as critical habitat for the Appalachian elktoe, and The Eastern Band of Cherokee Indians owns a small parcel of land bordering the subject reach. We have coordinated the designation of critical habitat for the Appalachian elktoe with representatives of The Eastern Band of Cherokee Indians and have assessed potential effects of the designation to tribal resources.

We have consulted with the Bureau of Indian Affairs in the recent past regarding a timber management plan for the Cherokee Indian Reservation. The project plans included the maintenance of forested buffers and measures to control sediment and erosion in order to protect aquatic resources, including the Appalachian elktoe and its habitat, and we concurred that the plan was not likely to adversely affect the Appalachian elktoe. Because potential effects to the species' habitat were addressed, we do not believe reinitiation of consultation due to the designation of critical habitat is required.

In addition, it is expected that the EPA may initiate a section 7 consultation in the future regarding the issuance of NPDES permits for The Eastern Band of Cherokee Indians (the EPA, rather than the State of North Carolina, issues NPDES permits for discharges on the Cherokee Indian Reservation). However, we do not anticipate an adverse impact to the elktoe or its designated critical habitat because The Eastern Band of Cherokee Indians' wastewater treatment facility utilizes UV treatment (rather than chlorine) and the discharge from their wastewater treatment facility is located on a tributary stream that is separated (by an impoundment) from the reach of the Tuckasegee River that is designated as critical habitat.

Furthermore, as discussed elsewhere in this rule and in the economic analysis of the potential effects of the designation of critical habitat for the Appalachian elktoe, we do not believe the designation of critical habitat will have any additional regulatory effect on activities that require Federal permits or any other Federal actions or permitted activities beyond what is already required through the listing of the species. In view of this, The Eastern Band of Cherokee Indians stated, by

letter of July 2, 2002, that they did not object to the designation of critical habitat for the Appalachian elktoe.

References Cited

A complete list of all references cited in this rule is available upon request from the Asheville Field Office (*see* **ADDRESSES**).

Author

The primary author of this document is John A. Fridell, Asheville Field Office (*see* **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for the ''Elktoe, Appalachian'' under ''CLAMS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historical range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
CLAMS							
*	*	*	*	*	*	*	
Elktoe, Appalachian	*Alasmidonta raveneliana*	U.S.A. (NC, TN)	Entire	E	563	17.95(f)	NA.
*	*	*	*	*	*	*	

3. Amend § 17.95(f) by adding critical habitat for the Appalachian elktoe (*Alasmidonta raveneliana*) in the same alphabetical order as the species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

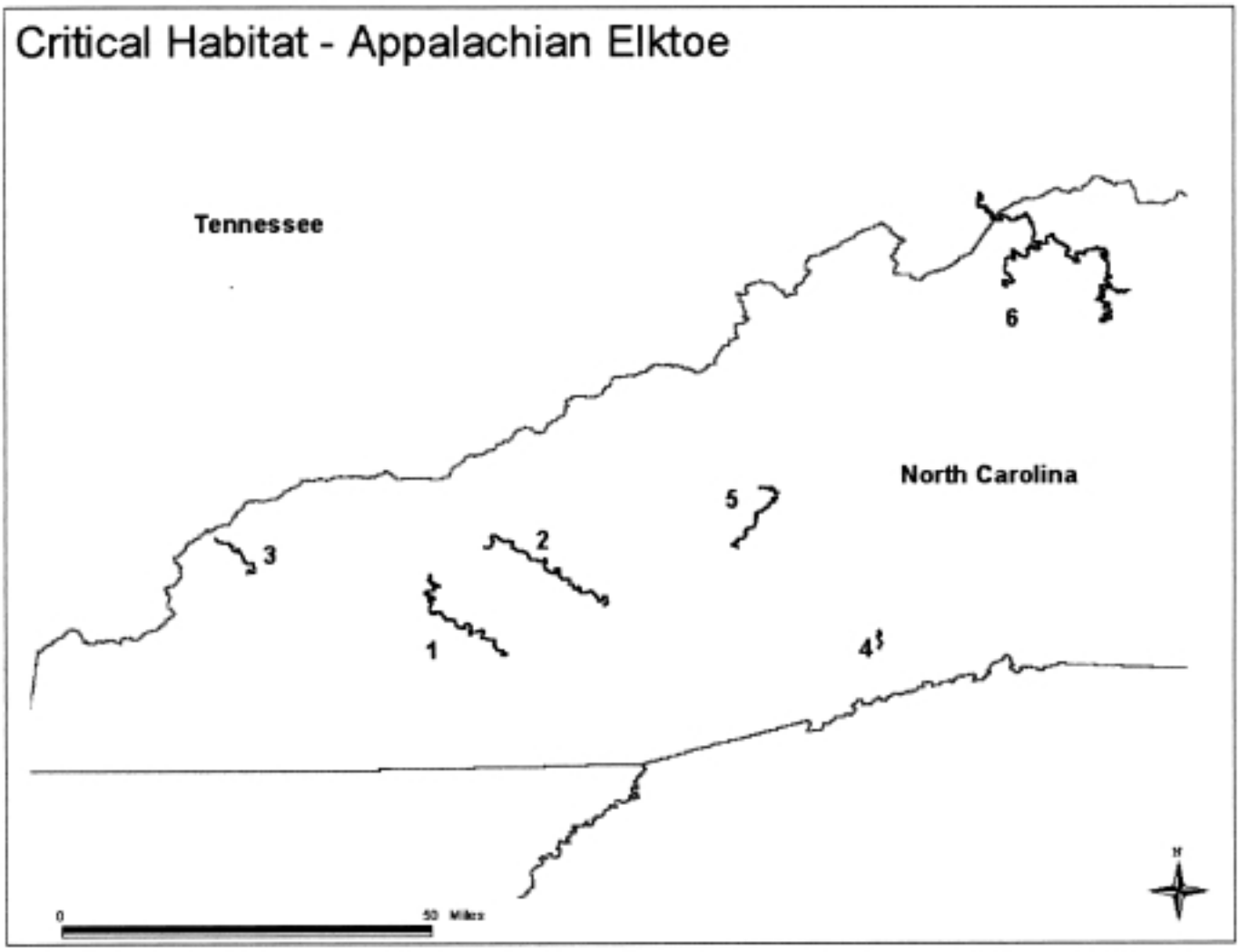
(f) *Clams and snails.*

* * * * *

Appalachian elktoe (*Alasmidonta raveneliana*)

(1) Critical habitat units are described below and depicted in the maps that follow, with the lateral extent of each designated unit bounded by the ordinary high-water line.

(i) Index map follows:



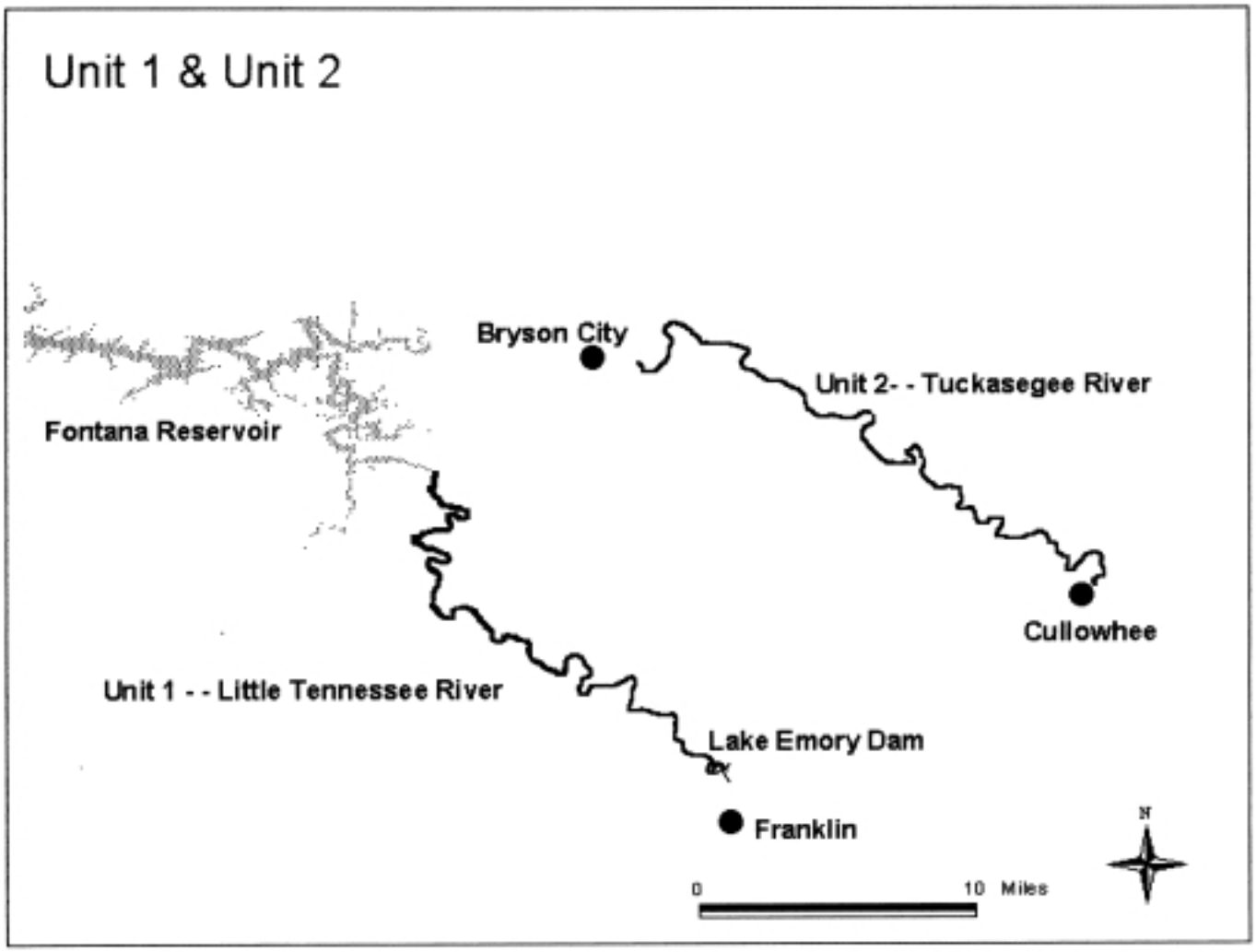
(2) Unit 1.

(i) Macon County and Swain County, NC—the main stem of the Little Tennessee River (Tennessee River system), from the Lake Emory Dam at Franklin, Macon County, NC, downstream to the backwaters of Fontana Reservoir in Swain County, NC.

(3) Unit 2.

(i) Jackson County and Swain County, NC—the main stem of the Tuckasegee River (Little Tennessee River system), from the N.C. State Route 1002 Bridge in Cullowhee, Jackson County, NC, downstream to the N.C. Highway 19 Bridge, north of Bryson City, Swain County, NC.

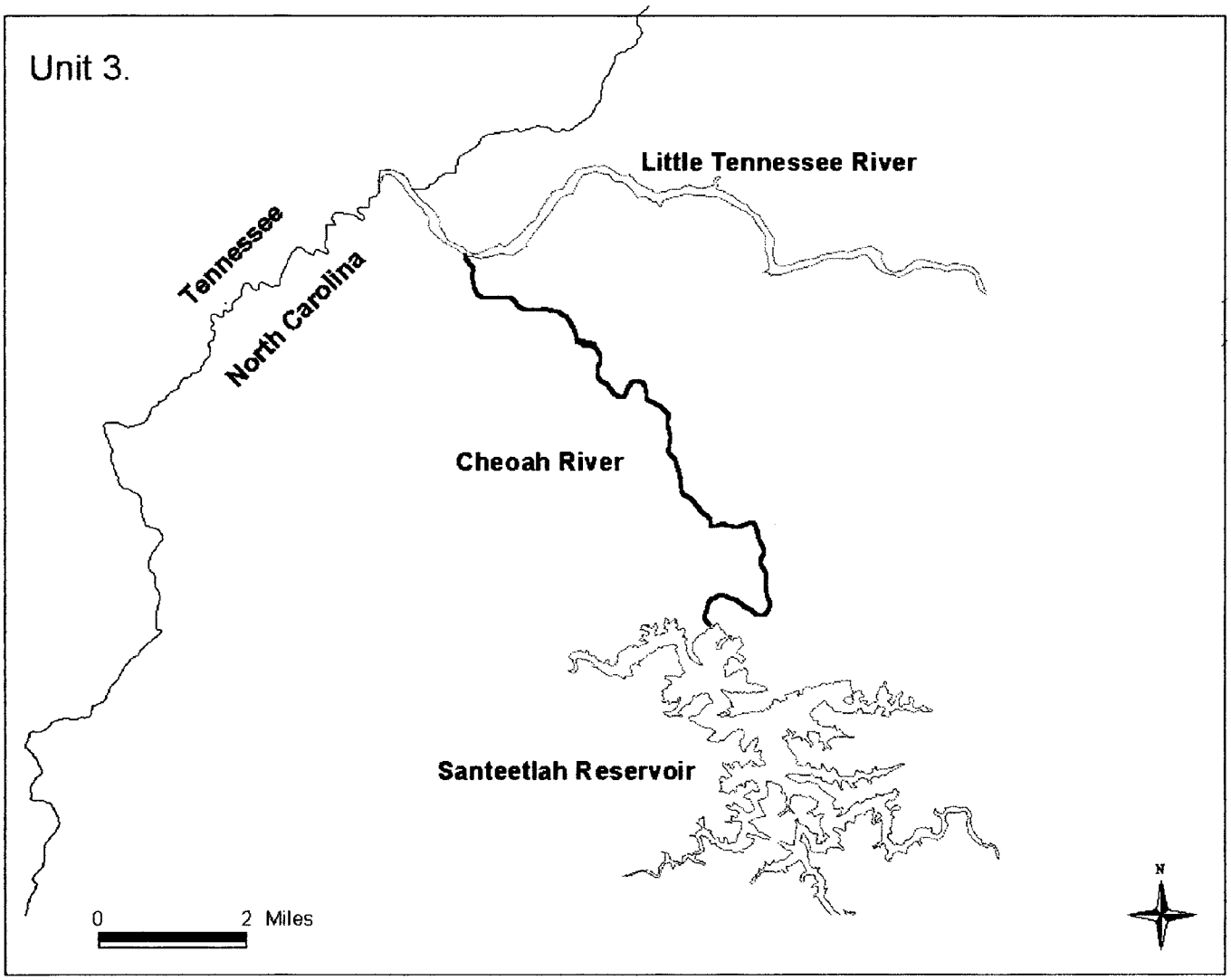
(ii) Map of Unit 1 and Unit 2 follows:



(4) Unit 3.

(i) Graham County, NC—the main stem of the Cheoah River (Little Tennessee River system), from the Santeetlah Dam, downstream to its confluence with the Little Tennessee River.

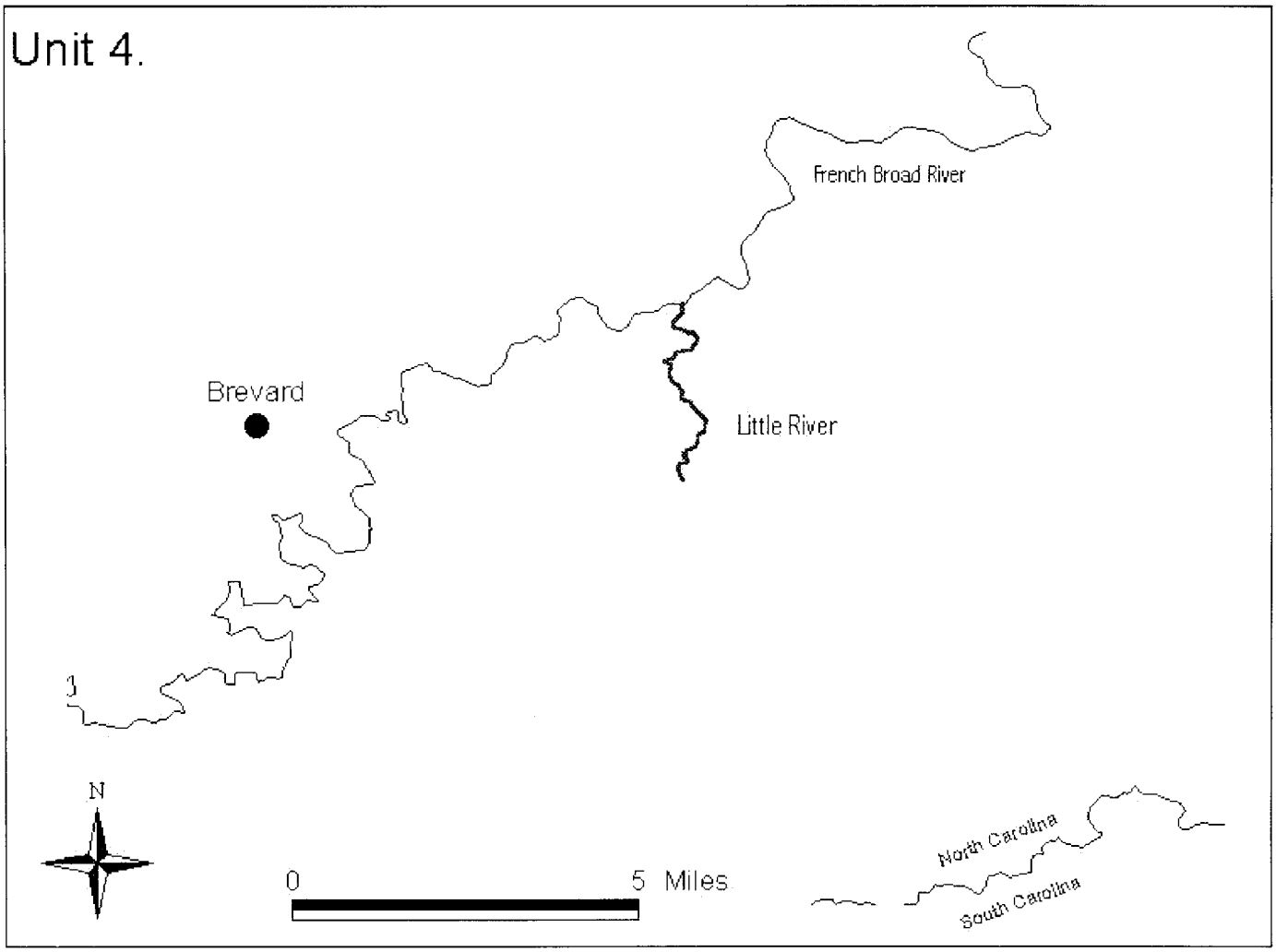
(ii) Map of Unit 3 follows:



(5) Unit 4.

(i) Transylvania County, NC—the main stem of the Little River (French Broad River system), from the Cascade Lake Power Plant, downstream to its confluence with the French Broad River.

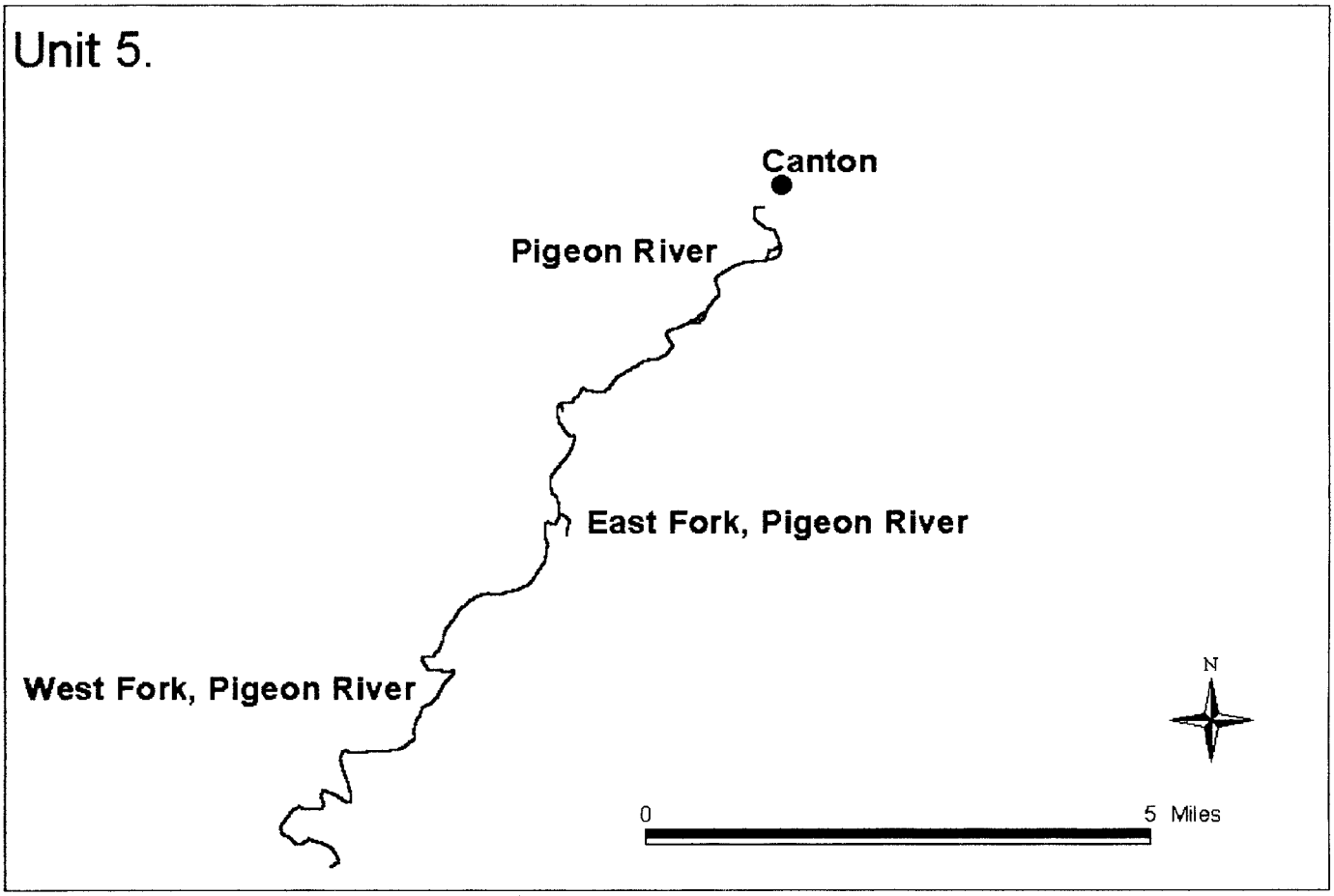
(ii) Map of Unit 4 follows:



(6) Unit 5.

(i) Haywood County, NC—the main stem of the West Fork Pigeon River (French Broad River system), from the confluence of the Little East Fork Pigeon River, downstream to the confluence of the East Fork Pigeon River, and the main stem of the Pigeon River, from the confluence of the West Fork Pigeon River and the East Fork Pigeon River, downstream to the N.C. Highway 215 Bridge crossing, south of Canton, NC.

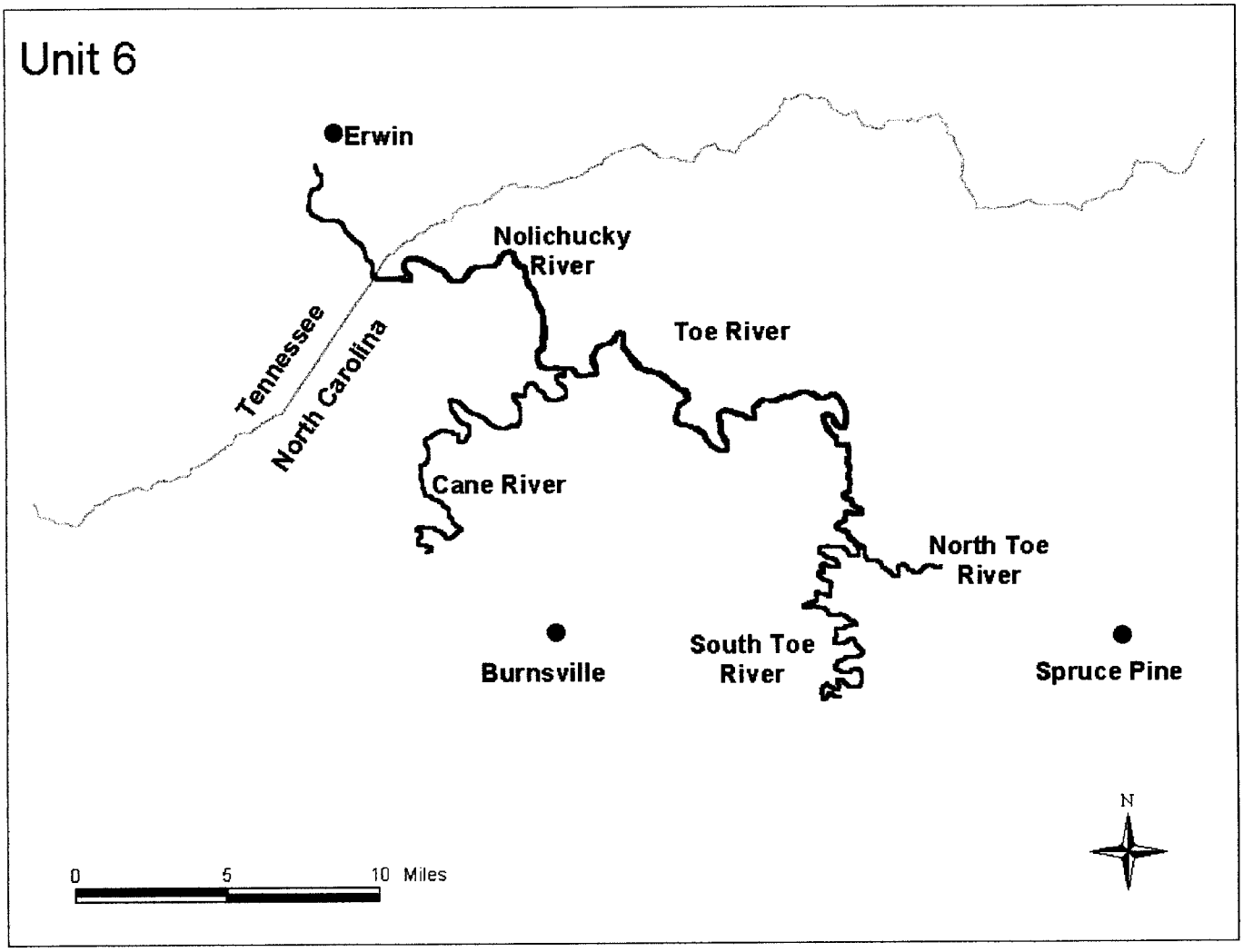
(ii) Map of Unit 5 follows:



(7) Unit 6.

(i) Yancey County and Mitchell County, NC, and Unicoi County, TN—the main stem of the North Toe River, Yancey and Mitchell Counties, NC, from the confluence of Big Crabtree Creek, downstream to the confluence of the South Toe River; the main stem of the South Toe River, Yancey County, NC, from the N.C. State Route 1152 Bridge, downstream to its confluence with the North Toe River; the main stem of the Toe River, Yancey and Mitchell Counties, NC, from the confluence of the North Toe River and the South Toe River, downstream to the confluence of the Cane River; the main stem of the Cane River, Yancey County, NC, from the N.C. State Route 1381 Bridge, downstream to its confluence with the Toe River; and the main stem of the Nolichucky River from the confluence of the Toe River and the Cane River in Yancey County and Mitchell County, NC, downstream to the U.S. Highway 23/19W Bridge southwest of Erwin, Unicoi County, TN.

(ii) Map of Unit 6 follows:



(8) Within these areas, the primary constituent elements include:

(i) Permanent, flowing, cool, clean water;

(ii) Geomorphically stable stream channels and banks;

(iii) Pool, riffle, and run sequences within the channel;

(iv) Stable sand, gravel, cobble, boulder, and bedrock substrates with no more than low amounts of fine sediment;

(v) Moderate to high stream gradient;

(vi) Periodic natural flooding; and

(vii) Fish hosts, with adequate living, foraging, and spawning areas for them.

* * * * *

Dated: September 18, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–24362 Filed 9–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274–1301–02; I.D. 092002A]

Fisheries of the Northeastern United States; Scup Fishery; Commercial Quota Harvested for Summer Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial scup quota harvested for summer period.

SUMMARY: NMFS announces that the scup commercial quota available in the summer period to the coastal states from Maine to North Carolina has been harvested. Federally permitted commercial vessels may not land scup in these states for the remainder of the 2002 summer quota period (through October 31, 2002). Regulations governing the scup fishery require publication of this notification to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise Federal vessel permit holders and Federal dealer permit holders.

DATES: Effective 0001 hrs local time, October 5, 2002, through 2400 hrs local time, October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, (978) 281–9279.

SUPPLEMENTARY INFORMATION: Regulations governing the scup fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into three quota periods. The summer commercial quota (May through October) is distributed to the coastal states from Maine through North Carolina. The process to set the annual

commercial quota and the seasonal allocation is described in § 648.120.

The total commercial quota for scup for the 2002 calendar year was initially set at 8,000,000 lb (3,628,739 kg) and then adjusted downward to 7,834,522 lb (3,553,679 kg), for research quota set-asides (66 FR 66351; December 26, 2001). The summer period quota, which is equal to 38.95 percent of the annual commercial quota, was 3,051,546 lb (1,384,158 kg). The quota allocation was adjusted downward to compensate for 2001 summer period landings in excess of the 2001 summer period quota, consistent with the procedures in § 648.140. The final adjusted summer period quota was set at 2,556,595 lb (1,159,652 kg).

Section 648.121 requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the commercial scup quota for each quota period and, based upon dealer reports, state data, and other available information, to determine when the commercial quota has been harvested. NMFS is required to publish notification in the **Federal Register** advising and notifying federally permitted commercial vessels and federally permitted dealers that, effective upon a specific date, the scup commercial quota has been harvested. The Regional Administrator has determined, based upon dealer reports and other available information, that the scup commercial quota for the 2002 summer period has been harvested.

The regulations at § 648.4(b) provide that Federal scup moratorium permit holders agree as a condition of the permit not to land scup in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for scup is available. Therefore, effective 0001 hours, October 5, 2002, further landings of scup by vessels holding Federal scup moratorium permits are prohibited through October 31, 2002. The Winter II period for commercial scup harvest will open on November 1, 2002. Effective 0001 hours, October 5, 2002, federally permitted dealers are also advised that they may not purchase scup from federally permitted vessels that land in coastal states from Maine through North Carolina for the remainder of the summer period (through October 31, 2002).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 20, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–24519 Filed 9–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 082802D]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action 11 - Adjustment of the Recreational Fishery from the U.S.-Canada Border to Cape Falcon, OR

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment; request for comments.

SUMMARY: NMFS announces that the recreational fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was modified to close to chinook retention effective Saturday, August 10, 2002, in the Neah Bay, La Push, and Columbia River sub-areas. The three sub-areas will remain open through the earlier of their established season end dates or the attainment of their respective marked coho subarea quotas. The Westport sub-area reopened as scheduled on August 11, 2002, but was modified to close at midnight August 15, 2002, with the bag limit modified to two fish per day, but only 1 chinook, and all retained coho must have a healed adipose fin clip. The chinook minimum size limit continues to be 28 inches (71.1 cm) total length. The Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that these management measures should be implemented to provide greater access to the coho quota. This action was necessary to conform to the 2002 management goals.

DATES: Adjustment in the area from the U.S.-Canada Border to Cape Falcon, OR, effective 0001 hours local time (l.t.), August 10, 2002, through 2359 hours l.t., September 8, 2002, for the Neah Bay and La Push sub-areas, 2359 hours l.t., August 15, 2002 for the Westport sub-area, and 2359 hours l.t. September 30, 2002, for the Columbia River sub-area; or until modified by a subsequent inseason, which will be published in the **Federal Register** for the west coast salmon fisheries, or until the effective date of the 2003 management measures. Comments will be accepted through October 15, 2002.

ADDRESSES: Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator modified the season for the recreational fishery in the area from the U.S.-Canada Border to Cape Falcon, OR to close to chinook retention effective Saturday, August 10, 2002, in the Neah Bay, La Push, and Columbia River sub-areas. The three sub-areas will remain open through the earlier of their established season end dates or the attainment of their respective marked coho subarea quotas. The Westport sub-area reopened as scheduled on August 11, 2002, but was modified to close at midnight August 15, 2002, with the bag limit modified to two fish per day, but only 1 chinook, and all retained coho required to have a healed adipose fin clip. The chinook minimum size limit continues to be 28 inches (71.1 cm) total length. Information provided on August 8, 2002, regarding the available catch and effort data indicated that these management measures should be implemented to provide greater access to the coho quota. Modification of fishing seasons, species that may be caught, and bag limits are authorized by regulations at 50 CFR 660.409(b)(1)(i), (ii), and (iii), respectively.

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced the recreational fishery in the area from the U.S.-Canada Border to Cape Falcon, OR would have an overall chinook quota of 67,500 fish, with each of its four sub-areas having a chinook guideline. The sub-areas were

announced as follows: the U.S.-Canada Border to Cape Alava, WA (Neah Bay Area) would open July 7, 2002, through the earlier of September 8, 2002, or a 11,780 coho subarea quota, with a guideline of 2,600 chinook; Cape Alava, WA to Queets River (La Push Area) would open July 7, 2002, through the earlier of September 8, 2002, or a 2,770 coho subarea quota, with a guideline of 1,600 chinook; Queets River to Leadbetter Point, WA (Westport Area) would open June 30 through the earlier of September 8, 2002 or a 39,280 coho subarea quota, with a guideline of 32,000 chinook; and Leadbetter Point, WA to Cape

Falcon, OR (Columbia River Area) would open July 7, 2002, through earlier of September 30, 2002, or 55,700 coho subarea quota, with a guideline of 11,200 chinook.

The recreational fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was modified once by inseason action (67 FR 52891, August 14, 2002). The fishery was modified to establish a chinook minimum size limit of 28 inches (71.1 cm) total length from the U.S.-Canada Border to Leadbetter Point, WA, and 26 inches (66.0 cm) total length from Leadbetter Point, WA to Cape Falcon, OR effective July 21, 2002. Information provided on July 18, 2002, regarding the available catch and effort data indicated that modifying the minimum size limit of 24 inches (61.0 cm) total length for chinook to the adjusted size limits should be implemented to slow the catch of chinook and provide greater access to the coho quota. These modifications to the fishing season were adopted to avoid closing the fishery early due to reaching the chinook quota, thus precluding the opportunity to catch available marked hatchery coho salmon that typically show up in greater numbers later in the season.

On August 8, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the chinook and coho catch rates, and effort data indicated that it was likely that the chinook quota would be reached prematurely, potentially foreclosing opportunity of fishers to harvest marked coho which arrive in greater numbers later in the season. As a result, the states of Washington and Oregon recommended, and the Regional Administrator concurred, that the recreational fishery in the area from the U.S.-Canada Border to Cape Falcon, OR needed modification to allow fishermen to access the available marked coho left in the four sub-area quotas. Effective Saturday, August 10, 2002, the Neah Bay, La Push, and Columbia River sub-areas were closed to chinook retention, with the three sub-areas remaining open until the attainment of their respective marked coho subarea quotas or the established season end dates, whichever is earlier. The Westport sub-area reopened as scheduled on August 11, 2002, but was modified to close at midnight August 15, 2002, with the bag limit modified to two fish per day, but only 1 chinook, and all retained coho required to have a healed adipose fin clip. The chinook minimum size limit continues to be 28 inches (71.1 cm) total length. All other restrictions that apply to this fishery remain in effect as announced in the 2002 annual management measures. In addition, the parties agreed to reevaluate the fishery on August 15, 2002, and assess the possibility of further openers.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the effective date by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because prior notice and opportunity for public comment and delay in effectiveness of this rule is impracticable and contrary to the public interest. As previously noted, actual notice of this action is provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment is impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the limits to which the fishery must be adjusted to reduce harvest rates in the fishery must be in place. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because it does not allow commercial fishermen appropriately controlled access to the available fish at the time they are available.

The AA finds good cause to waive the 30–day delay in effectiveness required under 5 U.S.C. 553(d)(3). A delay in effectiveness of this action would not allow commercial fishermen appropriately controlled access to the available fish at the time they are available.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 19, 2002

Virginia M. Fay

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–24372 Filed 9–26–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 188
Friday, September 27, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–06–AD]

RIN 2120–AA64

Airworthiness Directives; McCauley Propeller Systems 1A103/TCM Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), applicable to McCauley Propeller Systems 1A103/TCM series propellers. That AD currently requires an initial inspection for cracks in the propeller hub in accordance with a dye penetrant inspection procedure, replacement of propellers with cracks that do not meet acceptable limits, rework of propellers with cracks that meet acceptable limits, and repetitive inspections of all affected propellers. This proposal would allow additional rework operations to be performed at more than one bolt hole location. This proposal is prompted by the need to clarify the requirement to use a steel backing plate and Mylar gasket during installation of the propeller, and to relax the replacement requirements. The actions specified in the proposed AD are intended to prevent propeller separation due to hub fatigue cracking, which can result in loss of control of the airplane.

DATES: Comments must be received by November 26, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–06–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov.*'' Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from McCauley Propeller Systems, 3535 McCauley Drive, P.O. Drawer 5053, Vandalia, OH 45377–5053; telephone: 937–890–5246; fax: 937–890–6001. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Timothy Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2350 East Devon Avenue, Room 323, Des Plaines, IL 60018; telephone: (847) 294–7132; fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–06–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–06–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On March 11, 1997, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 97–06–16, Amendment 39–9973 (62 FR 16064, April 4, 1997), to require an initial inspection for cracks in the propeller hub using a dye penetrant inspection procedure, replacement of propellers with cracks that do not meet acceptable limits, rework of propellers with cracks that meet acceptable limits, and repetitive inspections of all affected propellers. That action was prompted by the propeller manufacturer's development of a dye penetrant inspection procedure that will more accurately detect cracking. The requirements of that AD are intended to prevent propeller separation due to hub fatigue cracking, which can result in loss of control of the airplane.

Events Since the Issuing of AD 97–06–16

Since AD 97–06–16 was issued, the propeller manufacturer has issued a revised service bulletin that recommends changing the requirement to remove and replace a previously reworked propeller, if there is a crack at another bolt hole. The revised service bulletin now allows for additional rework on some propellers that have already undergone rework. Also, the revised service bulletin now requires painting the propeller hub before installation of the propeller. This AD would incorporate the revised service bulletin.

In addition, the FAA received comments to the current AD that was issued as a final rule, request for comments. One comment points out that the AD does not explicitly require installation of the propeller in accordance with the service bulletin, which calls for installation of a steel backing plate and Mylar gasket when the propeller is installed. Since the FAA intended that the propeller be

reinstalled with the steel backing plate and Mylar gasket, this proposal would include an explicit requirement to install the propeller in accordance with the revised service bulletin.

Also, one other comment asks if the term ''3,000 or more hours time-in-service'' in the AD has the same meaning as the term ''3,000 hours or more total time in service'' as used in the service bulletin. The FAA believes that the two terms are synonymous, and, therefore, no changes to the term used in the AD are proposed. Even if there were a difference, however, the compliance time specified in the AD would take precedence over any compliance time stated in the service bulletin.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of McCauley Propeller Systems Alert Service Bulletin (ASB) 221C, dated September 7, 1999, that describes procedures for dye penetrant inspections and rework of affected propellers. ASB 221C also provides procedures for installation of the propeller using a steel backing plate and Mylar gasket.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of this same type design, this proposal would supersede AD 97–06–16 to require:

- An initial inspection for cracks in the propeller hub in accordance with a dye penetrant inspection procedure.
- Replacement of propellers with cracks that do not meet acceptable limits.
- Rework of propellers with cracks that meet acceptable limits.
- Painting of the propeller hub before installation of the propeller
- Repetitive inspections of all affected propellers.
- Installation of a steel backing plate and Mylar gasket during installation of the propeller.

The actions would be required to be done in accordance with the service bulletin described previously.

Economic Analysis

There are approximately 6,100 propellers of the affected design in the worldwide fleet. The FAA estimates that approximately 3,000 propellers installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 3 work hours per propeller to perform the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $17 per propeller. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $591,000 per year.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9973, (62 FR 16064, April 4, 1997), and by adding a new airworthiness directive:

McCauley Propeller Systems: Docket No. 97–ANE–06–AD. Supersedes AD 97–06–16, Amendment 39–9973.

Applicability

This airworthiness directive (AD) is applicable to McCauley Propeller Systems 1A103/TCM series propellers with numeric serial numbers 770001 through 777390; and propellers with alphanumeric serial numbers BC001 up to, but not including KC001. These propellers are installed on but not limited to Cessna 152, Cessna A152, Reims F152, and Reims FA152 series airplanes. All alphanumeric serial number propellers beginning with the letters ''B'' through ''J'' are affected by this AD.

Note 1: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated below, unless already done.

To prevent propeller separation due to hub fatigue cracking, which can result in loss of control of the airplane, do the following:

Inspection and Rework Requirements

(a) Inspect propellers, rework or replace with a serviceable propeller, as necessary, and install in accordance with Sections II, III, IV, and V of McCauley Propeller Systems Alert Service Bulletin (ASB) No. 221C, dated September 7, 1999, as follows:

(1) For propellers with 3,000 or more hours time-in-service (TIS), or unknown TIS, on the effective date of this AD, as follows:

(i) If not already done, perform an initial dye penetrant inspection in accordance with Section II of the ASB before further flight.

(ii) Thereafter, perform repetitive dye penetrant inspections in accordance with Section IV of the ASB at intervals not to exceed 800 hours TIS, or 12 calendar months since last dye penetrant inspection, whichever occurs first.

(iii) If cracks are discovered that are not within the rework limits described in Section III of the ASB, before further flight remove the propeller from service and replace with a serviceable propeller.

(iv) If cracks are discovered that are within the rework limits described in Section III of the ASB, before further flight rework the propeller in accordance with Section III of the ASB, and resume inspecting repetitively in accordance with paragraph (a)(1)(ii) of this AD.

(2) For propellers with less than 3,000 hours TIS on the effective date of this AD, upon accumulating 3,000 hours TIS perform the steps required by paragraph (a)(1)(i) through (a)(1)(iv) of this AD.

(b) Paint camber side of the propeller in accordance with Section II or Section III of the ASB.

(c) Install propeller in accordance with Section V of the ASB.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (CHIACO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, CHIACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the CHIACO.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on September 18, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–24544 Filed 9–26–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–13]

Establishment of Class D Airspace; Griffiss Airpark, Rome, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class D airspace at Griffiss Airfield (RME), Rome, NY. The commissioning of an Airport Traffic Control Tower (ATCT) to serve flights operating at Griffiss Airpark and to accommodate flights operating under Instrument Flight Rules (IFR) makes this action necessary. Controlled airspace extending upward from the surface is needed to contain aircraft operations at the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before October 28, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–13, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809: telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–AEA–13''. The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket closing both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class D airspace area at Griffiss Airpark, Rome, NY. The commissioning of an Airport Traffic Control Tower to serve the airport and control flights operating IFR to and from the airport makes this action necessary. Controlled airspace extending upward from the surface is needed to accommodate the airport traffic and IFR operations. Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points,

dated August 31, 2001 and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D airspace areas extending upward from the surface of the earth.

* * * * *

AEA NY D Rome, NY [NEW]

Griffiss Airpark, Rome, NY

(Lat. 43°14′02″N. long. 75°24′25″W.)

Oneida County Airport, Utica, NY

(Lat. 43°08′43″N. long. 75°23′02″W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4-mile radius of Griffiss Airpark excluding the portion within the 4.2-mile radius of Oneida County Airport Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York on September 5, 2002.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–24128 Filed 9–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–7]

Proposed Modification of Class D Airspace; Knot Noster, Whiteman AFB, MO; and modification of Class E Airspace; Knob Noster, Whiteman AFB, MO; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects an error in the airspace classification of a notice of proposed rulemaking that was published in the **Federal Register** on Wednesday, August 28, 2002 (67 FR 55180). The proposal was to modify Class D and Class E airspace at Knob Noster, Whiteman AFB, MO.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 02–21136 published on Wednesday, August 28, 2002 (67 FR 55180), proposed to modify Class D, Class E2, and ZE5 Airspace at Knob Noster, Whiteman AFB, MO. Class E5 Airspace was incorrectly labeled as Class E2 Airspace thereby proposing two conflicting legal descriptions of Class E2 Airspace and omitting any legal description of Class E5 Airspace.

Accordingly, pursuant to the authority delegated to me, the error for the proposed Class E5 Airspace misidentified as Class E2 Airspace, Knob Noster, Whiteman AFB, MO, as published in the **Federal Register** Wednesday, August 28, 2002 (67 FR 55180) (FR Doc. 01–21136), is corrected as follows:

§ 71.1 [Corrected]

On page 55181, Column 3, first line, correct the heading ''ACE MO E2 Knob Noster, MO'' to read ''ACE MO E5 Knob Noster, MO''.

Issued in Kansas City, MO, on September 3, 2002.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 02–23827 Filed 9–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AAL–6]

Proposed Revision of Class E Airspace; Point Hope, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Point Hope, AK. Two new Standard Instrument Approach Procedures (SIAP) are being established for the Point Hope Airport. In addition, the Non Directional Beacon (NDB) Runway 1 and NDB Runway 19 SIAPs are being amended. The existing Class E airspace at Point Hope is insufficient to contain aircraft executing the new and revised SIAPs and thus needs to be increased. Adoption of this proposal would result in the addition and revision of Class E airspace at Point Hope, AK.

DATES: Comments must be received on or before November 12, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 02–AAL–6, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's home page at *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.CTR.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–AAL–6.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the Government Printing Office's Web page for access to recently published rulemaking documents at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising Class E airspace at Point Hope, AK. The intended effect of this proposal is to extend that Class E controlled airspace above 1,200 feet to enable IFR operations at Point Hope, AK to be contained within controlled airspace.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Point Hope Airport. The new approaches are (1) Area Navigation (Goblal Positioning System) (RNAV GPS) Runway 1, original; and (2) RNAV (GPS) Runway 19, original. In addition, two SIAPs are being amended: (1) The Non-directional Radio Beacon/Distance Measuring Equipment (NDB) or GPS Runway 1 approach will become the NDB Runway 1 approach, and (2) the NDB or GPS Runway 19 approach will become the NDB Runway 19 approach. Navigation intersections on existing airways have also been created to initiate transitions to the new SIAPs. The transitions require more airspace than currently exists to contain Instrument Flight Rules (IFR) aircraft.

That airspace currently extending upward from 700 feet above the surface within a 6.4 mile radius (with extensions) of the Point Hope Airport will not be affected by this action. That airspace extending upward from 1,200 feet above the surface will be revised and expanded if this action is taken.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 in FAA Order 7400.9J, *Airspace Designations and Reporting Points,* dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points,* dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Point Hope, AK—[REVISED]

Point Hope Airport, AK

(Lat. 68°20′56″ N., long. 166°47′58″ W.)

Point Hope NDB

(Lat. 68°20′41″ N., long. 166°47′51″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Point Hope Airport and within 3 miles each side of the 207° bearing of the Point Hope NDB extending from the 6.4-mile radius to 10.3 miles southwest of the airport and within 3 miles either side of the Point Hope NDB 017° bearing extending from the 6.4-mile radius to 9.9 miles northeast of the airport; and that airspace extending upward from 1,200 feet above the surface within lat. 68°45′00″ N, long. 166°00′00″ W; to lat. 68°15′00″ N, long. 165°53′00″ W; to lat. 67°55′00″ N, long. 166°03′00″ W; to lat. 68°01′30″ N, long. 167°25′00″ W; to lat. 68°45′00″ N, long. 166°52′30″ W, to the point of beginning.

* * * * *

Issued in Anchorage, AK, on September 18, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–24452 Filed 9–26–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Chapter VII

[Docket No. 020725178–2178–01]

Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Industry and Security is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded, or extended. To help make these determinations, BIS is seeking public comments on how existing foreign policy-based export controls have affected exporters and the general public.

DATES: Comments must be received by November 29, 2002.

ADDRESSES: Written comments (three copies) should be sent to Sheila Quarterman, Regulatory Policy Division, Office of Exporter Services, Bureau of

Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Comments may also be e-mailed to Brian Nilsson, Office of Strategic Trade and Foreign Policy Controls, at *BNilsson@bis.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Controls Division, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security; Telephone: (202) 482–5400. Copies of the current Annual Foreign Policy Report to the Congress are available at *www.bxa.doc.gov/press/2002/ForeignPolicyReport02/Default.htm.*

Copies may also be requested by calling the Office of Strategic Trade and Foreign Policy Controls.

SUPPLEMENTARY INFORMATION: The current foreign policy-based export controls maintained by the Bureau of Industry and Security (BIS) are set forth in the Export Administration Regulations (EAR), parts 742 (Commerce Control List Based Controls), 744 (End-User and End-Use Based Controls), and 746 (Embargoes and Special Country Controls). These controls apply to: high performance computers (§ 742.12); significant items (SI): hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (§ 742.15 and § 744.9); crime control and detection commodities (§ 742.7); specially designed implements of torture (§ 742.11); regional stability commodities and equipment (§ 742.6); equipment and related technical data used in the design, development, production, or use of missiles (§ 742.5 and § 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§ 742.2 and § 744.4); activities of U.S. persons in transactions related to missile technology or chemical or biological weapons proliferation in named countries (§ 744.6); nuclear propulsion (§ 744.5); aircraft and vessels (§ 744.7); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 742.19, 746.2, 746.3, and 746.7); and, Libya (§§ 744.8 and 746.4). Attention is also given in this context to the controls on nuclear-related commodities and technology (§§ 742.3 and 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non Proliferation Act.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), export controls maintained for foreign policy purposes require annual extension. Section 6 of the EAA requires a report to Congress when foreign policy-based export controls are extended. Although the EAA expired on August 20, 2001, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA, in Executive Order of August 17, 2001 (66 FR 44025, August 22, 2001), as extended by the President's Notice of August 14, 2002 (67 FR 53721, August 16, 2002). In January 2002, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy-based export controls then in effect. The Department of Commerce, insofar as appropriate, is following the provisions of Section 6 of the EAA in reviewing foreign policy-based export controls, requesting public comments on such controls, and submitting an annual report to Congress.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy-based export controls for another year. Among the criteria considered in determining whether to continue or revise U.S. foreign policy-based export controls are the following:

1. The likelihood that such export controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the export controls with the foreign policy objectives of the U.S. and with overall U.S. policy toward the country subject to the controls;

4. Whether reaction of other countries to the extension of such export controls by the U.S. is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to U.S. foreign policy interests;

5. The comparative benefits to U.S. foreign policy objectives versus the effect of the export controls on the export performance of the United States, the competitive position of the United States in the international economy, and the international reputation of the United States as a supplier of goods and technology; and

6. The ability of the United States to enforce the export controls effectively.

BIS is particularly interested in the experience of individual exporters in complying with nonproliferation export controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BIS is interested in industry information relating to the following:

1. Information on the effect of foreign policy-based export controls on sales of U.S. products to third countries (*i.e.,* those countries not subject to sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy controls.

2. Information on export controls maintained by U.S. trade partners (*i.e.*, to what extent do they have similar controls on goods and technology on a worldwide basis or to specific destinations).

3. Information on licensing policies or practices by foreign trade partners of the United States which are similar to U.S. foreign policy export controls, including export license application review criteria, use of export license conditions, and requirements for pre- and post-shipment verifications (preferably supported by examples of approvals, denials and foreign regulations).

4. Suggestions for revisions to foreign policy-based export controls (in the event there are differences) that would bring them more into line with multilateral practice.

5. Comments or suggestions as to actions that would make multilateral export controls more effective.

6. Information that illustrates the effect of foreign policy controls on the trade or acquisitions by intended targets of the controls.

7. Data or other information as to the effect of foreign policy-based export controls on overall trade, either for individual firms or for individual industrial sectors.

8. Suggestions as to how to measure the effect of foreign policy-based export controls on U.S. trade.

9. Information on the use of foreign policy-based export controls on targeted countries, entities, or individuals.

BIS is also interested in general comments relating to the extension or revision of existing U.S. foreign policy-based export controls.

Parties submitting comments are asked to be as specific as possible. In the interest of accuracy and completeness, BIS requires written comments. Oral comments must be followed by written memoranda. All written comments received before the close of the comment period will be considered by BIS in reviewing the foreign policy-

based export controls and in developing the annual report to Congress.

All written comments and information submitted in response to this notice will be a matter of public record and, therefore, will be available for public inspection and copying. The BIS does not maintain an on-site facility for the public to inspect public records. All public records are posted on the BIS' Web site which can be found at *www.bis.doc.gov* (click on the FOIA Reading Room link under the section of Public Information and Events). Copies of the public record may also be obtained by submitting a written request to the Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, Room 6883, 1401 Constitution Avenue, NW, Washington, DC 20230.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 02–24458 Filed 9–26–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

September 20, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice, agenda, and staff paper for the October 2nd staff conference on market monitoring.

SUMMARY: On July 31, 2002, the Commission issued a Notice of Proposed Rulemaking proposing to amend its regulations to remedy undue discrimination through open access transmission service and standard electricity market design (67 FR 55452, August 29, 2002). As announced in the Commission's August 28, 2002, Notice of Staff Conference on Marketing Monitoring (67 FR 57187, September 9, 2002) the Commission is convening a technical conference on October 2, 2002 to discuss and further develop the essential elements that should be required in a standard market monitoring plan. By this notice, the Commission is providing an agenda for the conference and a staff discussion paper on standard market metrics information.

DATES: Conference will be convened on October 2, 2002.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Room—2C, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Saida Shaalan, Office of Markets, Tariff and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8278, email: *saida.shaalan@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Notice, Agenda, and Staff Paper for the October 2nd Staff Conference on Market Monitoring

As announced in the Notice of Staff Conference on Market Monitoring, issued August 28, 2002, the staff of the Federal Energy Regulatory Commission (Commission) will hold a conference on Wednesday, October 2, 2002 to discuss and further develop the essential elements that should be required in a standard market monitoring plan. The conference will be held at FERC, 888 First St. NE, in Washington DC, in the Commission Meeting Room.

Staff is convening this conference to get additional public input on developing a standard market monitoring plan. The staff may then propose additional detail for such a plan, on which the public will then be given opportunity to comment.

The goal of this conference is to discuss the development of a standardized market monitoring plan to assist in evaluating the performance of wholesale electric markets and the conduct of individual market participants. The conference will include a discussion of standard indices, data and reporting needed to implement the market monitoring plan effectively. Attached is the conference Agenda as well as a staff discussion paper on standard market metrics.

The public is invited to attend. There is no registration or fee.

The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202–347–3700, or 800–336–6646. Transcripts will be placed in the public record ten days after the Commission receives the transcripts. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on ''FERC.''

For additional information, please contact Saida Shaalan at 202–502–8278, or by e-mail to *saida.shaalan@ferc.gov.*

Magalie R. Salas,

Secretary.

Agenda for the SMD Conference on Market Monitoring; Wednesday, October 2, 2002

Panel I—Academics, FTC, DOJ, and others—9:30 a.m.–11:00 a.m.

- Paul Joskow, Massachusetts Institute of Technology, Economics
- John Hilke, Federal Trade Commission
- Jade Eaton, Department of Justice, Attorney
- Kenneth Rose, National Regulatory Research Institute
- Kristin Domanski, Energy Security Analysis Inc.
- Scott Harvey, LECG

Panel II—Market Monitoring Units—11:00 a.m.–12:30 a.m

- David Patton, Independent Consultant, MISO
- Anjali Sheffrin, CAISO
- Frank Wolak, Stanford University, CAISO
- Robert Ethier, ISO NE
- Steve Balser, ISO NY
- Joseph Bowring, PJM ISO

Both panels will cover the same topics, but from a different perspective: The first will be a theoretical discussion of what needs to be done as we move towards establishing a standard set of metrics. The second panel will discuss what has been done in practice, what successes they have had, what impediments they have encountered, and what can be done to assist in resolving the difficulties.

The first half hour of each panel will address the first set of issues (below) and whether the ''strawman'' we issued includes the topics that need to be addressed. The second hour can then deal with a variety of issues associated with using a standard set of metrics such as data availability, regional differences, etc. as well as broader issues addressing market participant access to the data.

First half hour of each panel—standard set of metrics and the strawman:

- What aspects of the market should MMUs be monitoring and what are the metrics?
- Does the ''strawman'' capture these?
- Are there metrics which are missing?
- To what degree should MMUs be monitoring general market behavior vs. individual market participant behavior?

Last hour *of each panel*—data and regional issues and market participant accessability to the data:

- What data limitations are there in monitoring and what can FERC do to address them ?
- What, if any, differences in monitoring are appropriate by region? (Are some additional metrics likely to be needed in some regions?)

• What data or information needs to be available to the market to function properly?

• What data or information needs to be kept confidential for the market to function properly and protect corporate interests?

Lunch Break—12:30 p.m.–1:30 p.m.

Panel III—NYMEX, CFTC, SEC, and Others—1:30 p.m.–2:15 p.m.

• Robert Levin, NYMEX
• Randall Dodd, Professor , Financial Advisor
• William Kokontis, CFTC
• Alton Harvey, SEC
• Robert Nordhaus, Energy Attorney

This panel will address how other regulatory entities have dealt with market monitoring.

• What are the lessons learned from monitoring other markets and individual market players?

• What is the reality of what can be monitored, as opposed to the ideal?

• How should data needs of the market be balanced against corporate needs for confidentiality?

• What additional metrics are needed (*e.g.* financial)?

Break—2:15 p.m.–2:30 p.m.

Panel IV—Market Participants—2:30 p.m.–4:00 p.m.

• Mayor Sasson, Consolidated Edison
• Linda Clarke, Exelon Power Team
• Susan Kelly, NRECA
• Jolly Hayden, Calpine
• John Stout, Reliant
• Edison Elizeh, Pacificorp

This panel will address monitoring individual companies vs. the broader market.

• What is the appropriate level and depth of monitoring individual market behavior?

• To what degree should this monitoring be by MMU versus by the FERC?

• How does this compare to current MMU monitoring of individual participant behavior?

• What are the appropriate metrics with which to monitor?

Panel V—Consumers and State Representatives—4:00 p.m.–5:00 p.m.

• George Stojic, Michigan Public Service
• Mark Reeder, NYPSC
• Mark Cooper, Consumer Federation of America
• Denise Goulet, PA Office of Consumer Advocate

This panel is to obtain the state and consumer perspective of standard market monitoring and their reaction to the day's discussion and the positions taken.

• What is the reaction to what has been discussed today regarding standardizing a market monitoring plan?

• What monitoring issues have not been discussed or proposed in the ''strawman'' that need to be addressed for a comprehensive and balanced monitoring program?

''Strawman'' Staff Discussion Paper on Market Metrics SMD Staff Conference on Market Monitoring

October 2, 2002.

This paper explores what standard metrics the annual market monitoring reports proposed in the SMD NOPR might use to report on their markets. The paper proposes a core set of metrics to serve as a ''strawman'' for further development and detailed specification of standard metrics.

The SMD NOPR discusses some of the ways market monitors have measured the structure of their markets and the conduct of market participants (¶ 438) and requests comment on how the market monitor should develop useful measures that permit interregional comparisons (¶ 442.) Many of the techniques and measures underlying the annual reports and analyses are similar across market monitoring units (MMUs), stemming from common purposes and economic principles. However, differences among these analyses hinder comparability of results across existing ISO/RTO markets. These differences arise from several sources, including ISO/RTO market design, information collected, resource configurations, analytical approaches, and presentation. Although some of these differences will remain under SMD, it is important to adopt a standard set of market metrics as we move toward a standard set of design elements under SMD.

This paper seeks to advance the discussion toward specific metrics that can measure how well the markets operated by Independent Transmission Providers (ITPs) under SMD [1] function. The MMUs have recognized the need for such metrics and a working group of market monitors has drafted an initial catalog of metrics. The following discussion of reporting standards draws on this work,[2] on market monitoring reports, and on the general literature. We first address broad measurement categories and then discuss core measures for each category.

Measurement Categories

A virtually endless list of statistics is provided in the literature on market monitoring. We focus first on a limited set to address key questions about the SMD markets and to group statistics broadly for purposes of discussion and comment. No single set of metrics will cover all possibilities within a category, and there are gray areas between the defined categories. Nevertheless, our grouping serves to facilitate comparable analyses. The following categories frame the discussion of specific metrics:

• General market functioning
• Assessment of market structure
• Assessment of market performance
• Evaluation of participant conduct

General Market Functioning

General metrics of the state of the markets start with a general description of the market and changes over the year, emphasizing measures such as:

• energy market prices
• quantities delivered
• ancillary services prices
• transmission usage and pricing
• major input costs, such as fuel, and
• market ratios, such as a ratio of spot and forward prices.

These measurements come from specific observed quantities available in the normal course of operations, and serve as the basis for development of further measures and analyses, such as concentration measures or time series analysis of markets.

Although these measurements are not directly tied to a particular index of market power or market efficiency, standardization will permit better comparison across regional markets and time periods. It will also facilitate the development of other standard metrics specifically intended as indices of market structure or performance.

Market Structure Metrics

The MMUs need first to identify the geographic market for the products and identify load pockets. This is a necessary condition for applying metrics to measure market structure and performance.

Typical structural indicators highlight the competitiveness and efficiency of the market, in the defined relevant markets. We expect structural indices to be controversial, however structural measures, such as HHI or a measure of pivotal supply can serve as indicators of the state of the market structure, and, if properly standardized, permit comparisons across markets.

The SMD NOPR proposes to require each market monitoring unit (MMU) to perform a structural analysis to address market structure and performance prior to implementation of SMD (¶ 439) and to update this analysis annually.[3] The scope of the geographic market will change over time, as supply and demand conditions change. This

[1] This discussion also applies to existing RTO/ISO markets, to the extent that these markets correspond to the markets proposed under SMD.

[2] ''A Catalog of Market Metrics'', (Market Monitoring and Working Group, EISG April 2002, Alberta Canada).

[3] The SMD NOPR requires this analysis in order to implement market mitigation, but the analysis should also provide essential background for the application of the market metrics.

changing scope will need to be addressed in a structural analysis that identifies transmission constraints and load pockets.

Developing such indicators must permit ongoing evaluation of changes over time in the market and comparison of structural analyses across markets. We recognize that the precise relationship between the structure of the market and the performance of the market (either in aggregate or by individual participants) will remain controversial.

Market Performance Metrics

Performance measures typically focus on whether market outcomes are consistent with outcomes expected in a competitive market, whereas structural measurements examine whether the underlying market conditions suggest many different sellers can compete to serve load and sellers can reach many different buyers. Performance measures address what generators or loads actually do, whereas structural measures address what generators or load potentially can do. For example, market power is a structural characteristic of markets with certain properties (monopolistic or highly concentrated ownership), whereas the exercise of market power is an indicator of market performance associated with market outcomes, such as prices and quantities. A concentrated market (as measured by a high HHI) would be taken as a structural condition that might be expected to lead to the exercise of market power (as measured by a Lerner index that indicated the price markup over cost was above a competitive level.)

Aggregate market performance measures should cover a wide range of markets (*e.g.*, energy markets, ancillary services, capacity revenue rights), periods (*e.g.*, day ahead and real time markets, longer term) and conditions (*e.g.*, prices in relation to costs, output in relationship to capacity, market depth and liquidity.) Since no single measure will satisfy all the purposes of performance measurement, a balanced group of measures will be needed. Clear identification of each measure is important, so the theoretical and practical implications of applying each measure are understood. It is also important that measures be feasible to implement with data accessible to the market monitors.

Market Conduct Metrics

General statistical measures help identify patterns of anomalous market outcomes that appear to indicate undesirable behavior by individual market participants. For example, unexplained jumps in power prices that appear to have no basis in fundamentals such as fuel prices or high loads may indicate and exercise of market power. Therefore, the market performance measures, discussed above, can be a useful starting point in identifying problems of conduct.

However, general measures of market performance are unlikely to apply to individual participant conduct. General measures may indicate a need for further investigation, but drawing a line between outcomes that are caused by difficult-to-measure fundamentals (such as scarcity) and difficult-to-measure undesirable behavior (such as economic withholding) remains a matter of analytic judgment. Mitigation tools that can be employed ex ante may be preferable to ex post monitoring, but metrics to monitor the behavior of individual participants will remain important.

Core Metrics

In this section, we discuss specific core metrics that can be used to measure market structure and performance across RTOs. These measures will also provide a basis for meaningful assessment of the state of each market over time. The specifics of measures must identify necessary data and calculations. Specifying the data and methods applicable across regional markets permits these measures to be used to compare performance across RTOs. All MMUs will produce the core set of measurements. However, we encourage the development of innovative measures beyond this core set to address regional differences and to identify new metrics that could be added to the core set if the metric provides useful insight across all RTOs.

The SMD NOPR expresses the Commission's intent to ''require the use of a core set of questions and techniques'' (¶ 436.) Questions, metrics and techniques are interrelated: standard metrics can provide a clear and comparable basis for answering some of the key core questions, but we recognize that many questions will require customized responses. Our purpose here is to begin to identify those metrics with a consensus on their value and calculation. The discussion below also raises questions relating to the use some of these metrics.

General Market Functioning

There needs to be a list of general market indicators focused on key concerns about the function of the markets proposed in the SMD NOPR. As a minimum, MMUs should provide general background information identifying major submarkets including recurring load pockets and describing the size of the markets, the general mix, transmission constraints, and export/import patterns. The reported information should include the following SMD markets:

- Energy markets (day ahead and real time, peak and off-peak)
- Ancillary services-regulation, spinning and non-spinning reserves (day ahead and real time)
- Transmission markets including CRRs (by term)

For each of these markets, separate information should be provided on quantities and prices for the following groupings:

- Overall market, for example the average load-weighted hourly price for the entire ITP.
- Submarkets, such as energy and ancillary service prices, provided by delivery/load zone and time period.
- Transmission prices for CRRs from each of the CRR auctions.
- Congestion charges in the day ahead and spot markets, provided for overall market and for major transmission paths.

These statistics should be provided on a monthly, seasonal and an annual basis. We seek comment on additional market information groupings that should be part of a standard package.

Market Structure Metrics

Concentration measures from the principal measure of market structure, with the HHI being used most commonly by the DOJ and in FERC analyses for mergers and market based rates. In the analysis of market based rates, FERC also employs the concept of a pivotal supplier, measuring the degree to which the supply of a single firm is needed to meet market demand in an area. These measures are designed to provide an indication of market power for a defined market with market power being defined as the ability to raise the price above the competitive level.[4] Although it can be argued that the link between concentration and market power is not always conclusive, it still provides a useful measure of competitive market structure, particularly when used in conjunction with other measures. However, it is important to clearly define the basis for calculating any specific concentration measure. The HHI can be based on one

[4] Depending on the use of the definition, the definition is sometimes expanded to require that the price rise be profitable to the firm, that the price rise be sustained for some period of time, or to require that the exercise of market power result in a misallocation of resources.

or more methods for measuring market share, including the following:

- HHI based on ownership shares of installed capacity, measured seasonally, and for submarkets where transmission constraints are frequently binding.
- HHI for energy output, calculated from hourly generator output for an overall market and for specific classes of generator (baseload, intermediate and peak units.)
- HHI based on capacity of units that are near the market clearing price, defined as units that are bid within a fixed percentage of the market clearing price in each hour.

We seek comment on the appropriate methods for measuring market share in the calculation of HHI. There are other possible structural measures for which staff would like comment, including the concept of pivotal supply noted above. Although less widely used than the HHI measure, the use of the pivotal supplier concept may provide certain advantages in electricity markets, where non-storability of electricity and the time-varying (and largely inelastic) natures of electricity demand are important.

In addition to these specific measures, there is a need to develop some measure of structural incentives for withholding, where firms with units near the market clearing price (typically peaking units) hold large amounts of lower priced (typically baseload) capacity that could profit from economic withholding of the marginal units, or from physical withholding of small amounts of baseload capacity that would force the peaking units to set the marginal price.

Market Performance Metrics

Competitive markets are efficient, and workably competitive markets should reflect an appropriate measure of efficiency. The SMD NOPR proposes that the annual assessment of market performance compare the actual market results with a benchmark for a competitive market (¶ 440), and cites studies using a simulated benchmark (¶ 437), but does not specify how that benchmark should be obtained.

There are many issues about whether a price benchmark should be based on costs and how to incorporate costs in calculating the benchmark. Simple methods of incorporating costs in a benchmark are desirable where feasible, but simply methods can be misleading in a complex market, because they will leave out key factors that may determine market prices and quantities. Computer simulation of prices and quantities is one alternative, but it is difficult to identify cost components (such as temporal opportunity costs), to get data, and to develop and implement such a modeling approach.

In some cases, using simple production cost estimates to replace bids in the dispatch, and estimating the market clearing price with these cost-based bids, might yield a reasonable estimate of a market clearing price, particularly if some adjustment is made for opportunity costs. Some key cost elements will still be missing from the approach, but results might form a reference point for measurement and comparisons. We believe there may be useful cost-based benchmarks, but seek comment on how to trade off complexity of approach with accuracy of results.

An alternative to basing a benchmark directly on costs is to base it on some estimate from in-merit bids during prior periods that are deemed competitive. This alternative is potentially attractive, in part because using averages of prior in-merit bids is one approach proposed in SMD, along with cost-based approaches, for setting default energy bids (¶420). This approach also has the advantage that the data needed are easier to obtain in the normal course of business and raise fewer issues of information confidentiality than approaches based on detailed generator production costs. However, reliance on generator bids rather than independent assessment of costs leaves open the relationship between the competitive benchmark and the costs of production, raising the issue of whether this approach satisfies the need to assess whether loads are being served at least cost. We seek comment on whether the use of the approach can be reconciled with the need to base a performance assessment on the overall cost efficiency of the market.

Market Conduct Metrics

Any assessment of individual behavior is extremely difficult, given the number and range of factors that need to be considered, and raises issue of data availability, access and confidentiality. Consequently, metrics for evaluation of conduct will need considerable additional study and analyst judgment. Nevertheless, because we know that individual conduct can include exercises of market power and attempts to game the market rules, there will continue to be a need for metrics to monitor the behavior of individual participants. For example, market monitoring units will need to continue to examine physical withholding through monitoring of patterns of outages, deratings and scheduling by generators, and to examine economic withholding through monitoring of bidding behavior of individual participants.

One possible core approach to evaluate conduct is to identify potential anomalies in bidding patterns, whether these anomalies are measured against prior bidding behavior or against some external standard such as estimated input costs. A metric for this purpose would be to measure patterns of how generator supply offers change as a function of bid price, by measuring shifts in quantities offered in different price ranges. We seek comment on whether this type of metric can assist in analyzing participant conduct, and on what other metrics might be useful.

Table 1 presents a list of key questions to address, suggested core metrics that could be used to address those questions, and comments on applying those metrics. It is organized around the categories discussed above. Staff proposes the metrics presented in Table 1 as the starting point for the discussion of standardization.

TABLE 1.—SUMMARY OF PRINCIPAL MARKET METRICS

Question(s) addressed	Metric(s)	Application notes
General Market Functioning		
Competitive Nature of Market: • Are market outcomes consistent with expectations for competitive markets? • How often is the price cap binding?	For Day Ahead (DA), Real Time (RT), Ancillary Services, and Congestion and Congestion Revenue Right (CRR) Markets: • Prices, including year to year comparisons • Number of hours and quantity of load at bid cap price • Quantities, including year to year comparisons	Look for price and quantity anomalies.
Inter-market Efficiency: • Is arbitrage occurring between markets in a competitive manner? • Are prices in neighboring markets converging?	• Ratio of DA and RT prices • Ratios of energy prices to ancillary service prices (regulation, spinning, non-spinning) • Ratio of spot to forward prices • Frequency and duration of imports/exports inconsistent with price differentials • Spark spreads (natural gas)	On locational, temporal, and type of service basis.
Demand Reponsiveness: • Is demand unresponsive to price in a manner that facilitates the exercise of market power? • To what degree is metering in place? • How is demand response providing alternatives to new supply?	• MW of demand response capabilities in energy and ancillary service markets • Load weighted % of demand bids that are price responsive • % of load with real-time metering capability • Price elasticity of demand • Changes in those demand response capabilities (spread of technology)	Analysis of formal demand response programs as well as simple demand responses to price. Retail rate barriers will reduce demand response.
Load Pockets: • What are the individual load pockets?	• Listing and description of individual load pockets	How should load pockets be determined?
Transmission Constraints: • Are transmission constraints limiting the development of competition in energy markets? • Where is congestion creating distinct separate load pockets? • Is the congestion inefficient (are there cheaper alternatives that are not exploited)?	• Frequency, duration and location of congestion • Level of congestion revenues • CRR revenue shortfall • Instances of nodal prices above highest bid taken • Pivotal supplier analysis • Seller HHIs and N-firm ratios • Buyer HHIs and N-firm ratios	All by load pocket.
Effects of Mitigation Actions: • To what extent are administrative solutions relied upon? • Are market mitigation actions impeding the competitive operation and development of energy markets?	• Number and duration of mitigation instances • Cost of mitigation from non-competitive load pockets created by constraints	By region. What is/should be the degree of subjectivity or discretion in imposing mitigation?
Risk: • Is the level of exposure to spot market prices appropriate? • Are levels of hedging of transmission service appropriate?	• % exposure to spot market • % of transmission service hedged (with CRRs)	
Market Structure		
Ownership and Control: • Does the distribution of ownership and control of assets support competition? • Does the distribution of ownership and control of assets support market development?	• Hirschman-Hirfindahl Index (HHI) of base ownership/control • N-firm concentration ratio of base ownership/control • HHI of capacity of units within a fixed percentage of the market clearing price • Pivotal Supply Analysis/Residual Supply Index For Each Supplier (measure of degree to which a supplier is critical to the market) • Market supply curves • Supply Elasticity	Disaggregate measures by supply category (base, intermediate, peak) and load level. Apply to overall regional market, and congested major load pockets. Is information on control of assets available?
Long Term Market Structure: • How long does it take from project announcement to entrance in the market? • Are long-term resources sufficient?	• Current and anticipated reserve margins • HHIs including actual and proposed entrants • Entrants by role in market (baseload, intermediate, peaking unit), and by fuel • Degree of entry barriers (*e.g.,* siting, environmental * * *)	Perform calculations for major congested zones.

TABLE 1.—SUMMARY OF PRINCIPAL MARKET METRICS—Continued

Question(s) addressed	Metric(s)	Application notes
Market Performance		
Efficiency of Short-Term Market: • Are short-term markets operating efficiently? • How much are short-term market results diverging from competitive outcome? • Is price set by the true marginal resource? • Is dispatch efficient?	• Lerner Index comparing actual hourly prices with benchmark of marginal energy costs • Price-cost markup comparing actual hourly prices with benchmark marginal energy costs • Price-cost markup comparing actual hourly prices with actual marginal energy costs on an aggregate basis and on an individual peak hour basis	Determine benchmark from historical bidding patterns and/or variable cost estimates. Base benchmark clearing price on simple dispatch model or more complex simulation.
Withholding: • Is generation capacity being withheld from the market that is economic? • Are observed high prices caused by withholding or scarcity?	• Output gap analysis—difference between actual hourly output with benchmark of economically available capacity • Output gap analysis—ratio of actual hourly output with economically available capacity • Difference between total generation capacity with brenchmark of economically available capacity • Ratio of total generation capacity with benchmark of economically available capacity • Deratings (Number, quantity, frequency) • Scheduled and forced outages (Number, quantity, frequency)	Develop hourly benchmark of economically available output, using supply function analysis based on historical patterns or on cost analysis of generation. Do by region and by fuel type. Case studies/audits of high priced hours may be needed. Analyze deratings and outages on the basis of conditions and participant characteristics.
Liquidy: • Are markets sufficiently liquid? • Will markets continue to be sufficiently liquid?	• Number of supply options (unaffiliated suppliers) in short-term markets • Number of supply options (unaffiliated suppliers) on a long-term basis • Percent of load that is long term • Supply (Capacity, Firm Energy, and Firm Demand Response) available in the bilateral market as a % of load	Calculate current, 1 year, 5 years, and 10 years forward.
Long Term Market Performance: • Is market pricing consistent with need for new entry? • Are longer term market outcomes efficient? • Is entry profitable for generation, for transmission, and for demand resources?	• Average price including long-term contracts • Price cost margin including long-term contracts • % of contracts that are long-term • Correlation between spot and long-term prices • Net revenue analysis of pricing and entry costs for base, intermediate and peaking plants • Net revenue analysis of pricing and entry costs for demand resources • Net revenue analysis of pricing and entry costs for transmission alternatives	(As calculated by CAL–ISO). Requires a significant amount of data on bilateral markets. Base net revenue analysis on energy market and on all-in compensation including all sources.
Market Participant Conduct		
Participant Conduct: • Is bidding behavior consistent with competitive behavior? • Are market participants following established rules? • Do bids reflect marginal opportunity costs?	• Bids by price bin (weekly average of bids for incremental energy compared to dispatched incremental MW) • Instances of failures to follow rules • Plant audits for outages	Plant audits for outages (forced and otherwise).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–200228(b); FRL–7382–3]

Approval and Promulgation; Georgia Transportation Conformity State Implementation Plan Memorandum of Agreement for the Atlanta Metropolitan Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: . EPA is promulgating one correction to its previous approval of the transportation conformity State Implementation Plan (SIP) for Atlanta, Georgia promulgated on April 7, 2000 (65 FR 18249). In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before October 28, 2002.

ADDRESSES: Written comments on this action should be addressed to Kelly A. Sheckler at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file GA 20228. The EPA Region 4 office may have additional background documents not available at the other locations.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Attn: Kelly Sheckler, 404/562–9042, *Sheckler.Kelly@epa.gov.*

Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Division, 4244 International Parkway, Suite 136, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Quality Modeling and Transportation Section, US. Environmental Protection Agency, Region 4, 61 Forsyths Street, SW, Atlanta, Georgia 30303, *Sheckler.Kelly@epa.gov,* (404) 562–9042.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: September 11, 2002.

A. Stanley Meiburg,

Regional Administrator, Region 4.

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BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[I.D. 091802D]

Endangered and Threatened Wildlife and Plants; 12–Month Finding for a Petition to List Barndoor Skate (Dipturus laevis) as Threatened or Endangered

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of petition finding.

SUMMARY: NMFS announces a 12–month finding on a petition to add barndoor skate (*Dipturus laevis*) to the list of threatened and endangered wildlife and to designate critical habitat under the Endangered Species Act (ESA). NMFS has compiled and analyzed the best available data, and prepared this administrative finding for barndoor skate. NMFS has determined after review of the best available scientific and commercial information that listing the barndoor skate is not warranted at this time. NMFS will retain the species on its candidate species list.

DATES: The finding announced in this notice was made on September 20, 2002.

ADDRESSES: Comments or questions concerning this petition finding should be sent to Mary Colligan, NMFS, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Mary Colligan, NMFS Northeast Region, 978–281–9116, or David O'Brien, NMFS Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 4(b)(3)(B) of the ESA (16 U.S.C. 1531 *et seq.*), for any petition to revise the List of Endangered or Threatened Wildlife and Plants that presents substantial scientific and commercial information, NMFS is required to make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Such 12–month findings are to be published promptly in the **Federal Register**.

On January 15, 1999 (64 FR 2629), NMFS requested information from the public on barndoor skate for possible inclusion on the list of candidate species. Such designation highlights species for which NMFS is concerned may warrant listing under the ESA, but it does not afford any regulatory protection for those species. In a petition dated March 4, 1999, GreenWorld requested that NMFS list barndoor skate as endangered or threatened and designate Georges Bank and other appropriate areas as critical habitat. The petitioner also requested that barndoor skate be listed immediately, as an emergency matter. Finally, the petitioner requested that other similar looking species of skate also be designated as threatened or endangered to ensure the protection of barndoor skate. On April 2, 1999, NMFS received a second petition from the Center for Marine Conservation (CMC) to list barndoor skate as an endangered species. This second petition is considered a comment on the first petition submitted by GreenWorld.

Both the petition and comment on the petition referenced a paper in the journal Science (Casey and Myers, 1998), which presents data on the decline of barndoor skate. The petitioner cites bycatch in commercial fishing gear as the major threat to the species' continued existence and also expresses concern over ''inbreeding depression due to small population size.'' Furthermore, the petitioner cites the inadequacy of existing regulatory mechanisms as a threat to the species. Comments submitted by the CMC cite

overutilization for commercial purposes as well as the inadequacy of existing regulatory mechanisms as the reasons for barndoor skate being endangered. Finally, the CMC requested that the Secretary of Commerce categorize barndoor skate as ''overfished'' under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA).

The information available in the petition and in NMFS' records indicated that listing barndoor skate under the ESA may be warranted. Therefore, pursuant to section 4(b)(3)(A) of the ESA, NMFS published a 90–day finding on June 21, 1999 (64 FR 33040) announcing their intent to review the status of barndoor skate and soliciting information from the public. NMFS received four comments from the public. One comment was received from the Marine Conservation Biology Institute (MCBI), containing materials in response to NMFS' request for information on barndoor skate. The information included a paper summarizing the conclusions reached at a scientific workshop convened by MCBI, which examined scientific information on the status and vulnerability of barndoor skate. A few participants at this workshop also were participants of the 30th Northeast Regional Stock Assessment Workshop (SAW).

One comment was received from the Virginia Institute of Marine Science (VIMS). The purpose of the comment was to inform NMFS of two recent studies discussed in a report entitled, ''Results of modifications to sea scallop dredge twine tops to facilitate the reduction of finfish bycatch: Georges Bank Closed Area II Experimental Fishery September-October 1998.'' The first study obtained distribution and size data on barndoor skate during a 1998 NMFS/Scallop Industry/Academic Institution cooperative survey of sea scallop resources in Georges Bank Closed Area II. According to VIMS, the results of barndoor skate density data appears to be higher than what was reported by Casey and Myers (1998). The second study was in the process of collecting more detailed data in the southern part of Georges Bank Closed Area II. The results from the first study were discussed in the Stock Assessment Review Committee (SARC) Consensus Summary of Assessments document. VIMS concluded that the decision to list barndoor skate as endangered or threatened should be delayed until other information sources are examined.

One comment was received from the following east coast commercial fishing groups: the Associated Fisheries of Maine Groundfish Group, Trawler Survival Fund, Fisheries Survival Fund, Monkfish Defense Fund, Garden State Seafood Association, and the North Carolina Fisheries Association. Included with their comments was a report entitled ''Conservation Status of the Barndoor Skate (Raja laevis)'', which was prepared by a participant of the 30th Northeast Regional SAW. Their comments requested that NMFS determine that listing barndoor skate under the ESA is not warranted based upon the best available science or information presented by the petitioners.

One comment was received from the CMC providing additional information regarding an option for reducing bycatch of large skates in New England trawl fisheries. A report entitled, ''Groundfish Forum's Experimental Fishing Permit to test the effectiveness of a halibut excluder,'' was included. The CMC stated that the report has been sent to the New England Fishery Management Council (Council), which is the appropriate forum to review the information provided. In addition, the CMC stated that it is pleased that the Council is moving forward with a management plan for skates.

To determine if the petitioned action was warranted, NMFS initiated a status review and, as part of that review, conducted a stock assessment at the 30th Northeast Regional SAW, which took place from November 29, 1999, through December 3, 1999. The SARC reviewed all four comments and information received, in addition to commercial fishery and state and Federal (both U.S. and Canadian) research survey data, for consideration and use in developing comments on the five ESA listing factors. The assessment information was compiled and presented in the 30th Northeast Regional Stock Assessment Workshop, SARC Consensus Summary of Assessments document completed in April of 2000.

The SARC Chairman was Dr. Robert Mohn, Bedford Institute of Oceanography, Department of Fisheries and Oceans, Halifax, Nova Scotia. The SARC is composed of scientists from the Northeast Fisheries Science Center (NEFSC), the Northeast Regional Office, NMFS Headquarters, the Mid-Atlantic Fishery Management Council, Atlantic States Marine Fisheries Commission, the states of Rhode Island and Massachusetts, Department of Fisheries and Oceans of Canada (DFO Canada), and VIMS.

The SAW Steering Committee guides the SAW process. Working groups are created to assemble data for the assessments, decide on methodology, and prepare documents for SARC review. Terms of reference provided by the Steering Committee for this assessment included: (1) A summary of available biological studies for the skate complex; (2) an update of commercial and recreational landings and survey indices through 1998/99; (3) a summary of fishery discard rates through use of sea sampling data or other information sources to the extent possible; (4) an estimate of fishing mortality rates and trends in relative or absolute stock size; (5) and an assessment of the status of species in the complex relative to overfishing criteria, as well as an evaluation of the status of barndoor skate relative to the listing factors of the ESA.

In March of 2000, NMFS notified the Council of its responsibility for the development of a plan and management of the seven species of skate found off the northeast coast of the United States. Since identification of barndoor skate as a candidate species, NMFS has been working with the Council to develop a Skate Fishery Management Plan (Skate FMP). The purpose of the plan is to develop and implement measures to conserve the seven species of skates found in the northeast region.

The Council has set up a Skate Plan Development Team, which prepared a 2000 Stock Assessment and Fishery Evaluation (SAFE) Report for the Northeast Skate Complex on January 5, 2001. This is the first Skate SAFE Report for the northeast region complex and will serve as a source document for the Skate FMP. The Skate FMP will also consist of a Supplemental Environmental Impact Statement. Skate FMP scoping meetings were held from January 23, 2001, through February 12, 2001. A draft Skate FMP was prepared and submitted to NMFS by the Council on April 10, 2002. Since then, a revised draft Skate FMP has been submitted to NMFS by the Council on August 1, 2002. NMFS will continue to work with the Council to ensure that the Skate FMP contains all of the necessary components required to manage and rebuild skate resources.

Life History

The barndoor skate is one of seven species of skates that occur off the northeastern coast of the United States. Barndoor skates can reach sizes in excess of 1 meter in length, and may not reach maturity until age 10 or older. The historic range of the barndoor skate extended from Cape Hatteras to the Grand Banks off Newfoundland. Skates are found from near the tide line to depths exceeding 700 m. Skates are not

known to undertake large-scale migrations, but they do move seasonally in response to changes in water temperature, generally offshore in the summer and early autumn and inshore in the winter and spring. Barndoor skates have a limited reproductive capacity with an estimated average fecundity of 47 egg cases per year (NEFSC, 2000). Spawning is thought to occur over a considerable part of the year. Members of the skate family lay eggs that are encased in a hard, leathery case commonly called a mermaid's purse. The eggs are yellowish or greenish brown with a hollow tendril at each corner enabling them to fasten to seaweeds or other objects (Bigelow and Schroeder, 1953). The incubation time is from 6 to 12 months with the young having the appearance of an adult upon hatching. Skates are omnivorous, feeding on crustaceans, worms, mollusks, and fish (Bigelow and Schroeder, 1953).

Slow growth and late age at maturity may cause skates to be more susceptible to the effects of fishing (NEFSC 2000). Musick (1999), stated that large, slow growing, late maturing species with low fecundity (i.e. K-selected species), tend to produce low maximum sustainable yields and recover more slowly from overfishing. Long-lived species tend to be especially prone to excessive mortalities and rapid stock collapse, resulting in a recovery that may take decades. These long-lived species may not be able to react as strongly, or as quickly as more productive species to make up for decreases in their population densities (Sminkey and Musick 1996). According to Musick (1999), the greatest threat to these long-lived species results from mixed species fisheries where they are taken as either directed catch or bycatch.

Consideration as a ''Species'' Under the ESA

To qualify for listing as a threatened or endangered species, a population of the petitioned barndoor skate must be considered a ''species'' under the ESA. Section 3(15) of the ESA defines a ''species'' to include any ''distinct population segment of any species of vertebrate which interbreeds when mature.'' On February 7, 1996, the USFWS and NMFS adopted a joint policy to clarify their interpretation of the phrase ''distinct population segment (DPS) of any species of vertebrate fish or wildlife'' for the purposes of listing, delisting, and reclassifying species under the ESA (51 FR 4722). The joint policy identifies two elements that must be considered when making DPS determinations: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs.

A population segment may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries across which there is a significant difference in exploitation control, habitat management, or conservation status.

Some of the considerations that may be used when determining the significance of a population segment to the taxon to which it belongs are: (1) Persistence of the discrete population in an unusual or unique ecological setting for the taxon; (2) evidence that the loss of the discrete population segment would cause a significant gap in the taxon's range; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere; or (4) evidence that the discrete population segment has marked genetic differences from other populations of the species.

There is insufficient information at this time to delineate DPSs of barndoor skate. In the absence of such information, NMFS will assess the status of the species rangewide for this listing analysis.

Status of Species

U.S. Research Surveys

U.S. Bureau of Fisheries research surveys and NEFSC bottom trawl surveys indicate that barndoor skates are most abundant in the Gulf of Maine, Georges Bank, and Southern New England offshore strata regions, with very few fish caught inshore (<27 meters depth) or in Mid-Atlantic regions. According to Bigelow and Schroeder (1953), historically barndoor skate have been found inshore to the tide line and in depths as great as 400 meters off Nantucket.

Indices of barndoor skate abundance and biomass from the NEFSC spring survey were highest during the 1960s, then declined in the early 1980s. Since 1990, both the spring and autumn survey indices have steadily increased, but are only about 10 percent of the peak values observed in the early 1960s (NEFSC 2000). While the status of ''overfished'' under the MSFCMA does not mean that the species is ''overutilized,'' ''threatened,'' or ''endangered'' under the ESA, current scientific information gathered for MSFCMA purposes can be useful in identifying trends in barndoor skate biomass for ESA purposes. Three-year averages of indices are used to evaluate the current status with respect to the SARC proposed MSFCMA biomass reference points. The 1996–1998 NEFSC autumn survey biomass index average was 0.08 kg/tow. According to the Skate SAFE Report, the 1997–1999 NEFSC autumn survey average is 0.17 kg/tow. The most recent 3–year average (1998–2000) increased further to 0.23 kg/tow (NEFSC, pers. comm., 2001). Preliminary 2001 data bring the 1999–2001 average up to 0.38 kg/tow, notably higher than the 1996–1998 average (NEFMC 2002a). This average is below the SARC proposed MSFCMA biomass target of 1.62 kg/tow and the threshold of 0.81 kg/tow for determining whether this species is overfished; however, an increasing trend has been seen in each of these survey years with the biomass index almost tripling in 3 years.

The median length of barndoor skate has been increasing in recent years for both the spring and autumn surveys; it is currently 70–75 cm. Since the decline in the 1980s, recent survey catches have included individuals as large as those recorded during the peak abundance in the early 1960s, but the large number of barndoor skates between 40 and 80 cm found during the 1960s is not apparent in recent surveys. However, the NEFSC winter surveys of length frequency distribution for 1998–1999 found a significant increase in the abundance of barndoor skate at lengths less than 80 cm (NEFSC 2000). These increases may have resulted from an increase in survival of young resulting from the closure of certain areas to fishing, and the elimination of foreign fishing in 1978.

Canadian Research and Commercial Data

Research surveys and commercial fishery observer sampling by the DFO Canada between the Gulf of St. Lawrence and Georges Bank show two principal concentrations of barndoor skates: Georges Bank/Fundian Channel and central Scotian Shelf. The broad ranges of sizes encountered by DFO Canada surveys on Georges Bank suggest that the current population consists of both juveniles and adults. Canadian observer sampling of commercial fisheries using both fixed and mobile gears suggests that commercial gears may catch more and larger barndoor skate than shown in research survey catches. This may be due to the different types of fishing gear

used. Otter trawls used in research surveys are not as efficient in catching larger species as they can escape easier than with long-line and fixed gear methods.

Recent information from commercial fisheries also indicates that barndoor skate are much more widely distributed to the north (roughly 16 degrees more) than what research surveys indicate (Kulka, 1999). Kulka (1999) states that there are a large number of records along the southwest slope of the Grand Bank, as well as the shelf edge as far north as 64° N. lat., which portrays a significant extension of range for this species. Further explanation by Kulka (1999) shows that the increased depth at which barndoor skate have been found is due to the distribution of the species being associated with particular bottom water temperatures, and except for a couple areas, these ideal temperatures are found at depths greater than 1000 m. Commercial fisheries information shows that some barndoor skate were caught as bycatch when there was fishing in waters greater than 800m on the slope of the Grand Bank (Kulka 1999). Kulka (1999) believes that this work considerably extends the latitudinal range of this species, in addition to suggesting a much greater depth range than what is portrayed by research survey data. Lastly, Kulka (1999) states that there appears to exist a proportion of the distribution that lies outside of the range of commercial and research fishing gears and, if this is the case, it may provide a protected area for the stock.

U.S. Commercial Fishery Data

Since the late 1800s, skates have been reported in New England fishery landings. Commercial fishery landings, primarily off Rhode Island, never exceeded several hundred metric tons until the arrival of distant water fleets during the 1960s. The commercial fishery landings are not reported specifically by species, with over 99 percent of the landings reported as ''unclassified skates.'' From 1989 to 1998, the biomass of total discards is estimated to be two (1998) to eight (1989) times the reported total landings. It is unknown what proportions of total skate landings and of total skate discards are barndoor skate. The commercial fishery discard mortality rate for skates and, therefore, the magnitude of total skate discard mortality, is unknown (NEFSC 2000).

U.S. Recreational Fishery Data

Aggregate recreational landings of all skates never exceeded 300 metric tons during the 1981–1998 time series of estimates from the Marine Recreational Fishery Statistics Survey. Skates reported as released alive average an order of magnitude greater than the reported landed number. The recreational fishery release mortality rate for skates is not known, but is likely analogous to that for flounders and other demersal species, generally ranging from 10–15 percent. Assuming this rate would suggest that the recreational fishery discard mortality is of similar magnitude to the recreational landings (NEFSC, 2000). The Skate SAFE Report states that skates in general have little to no recreational value and are not intentionally pursued in any recreational fisheries.

Conclusion

Barndoor skates were sporadically encountered throughout the 1970s, rarely encountered in the 1980s, and have shown an increase in abundance since the mid–1990s on the southwestern Scotian Shelf, on Brown's Bank and in the Gulf of Maine (Simon and Frank, 1999). The petitioners argue that current numbers of barndoor skate are so low that the species may not recover. Historical survey data suggest a substantial decline of barndoor skate in the northern part of their range had already taken place by the time that standardized NEFSC surveys began in U.S. waters in 1963. However, the species has persisted at low levels in U.S. waters over the past 30–40 years. Thus, there is no scientific evidence to suggest that barndoor skate are currently subject to unusual natural or anthropogenic factors that threaten its continued existence (NEFSC 2000).

Summary of Factors Affecting Barndoor Skate

Section 4(a)(1) of the ESA and the listing regulations (50 CFR part 424) set forth procedures for listing species. NMFS must determine, through the regulatory process, if a species is endangered or threatened based upon any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or human-made factors affecting its continued existence. The following is a discussion of the factors used to determine whether barndoor skate should be listed as a threatened or endangered species under the ESA.

A. Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Despite past declines, barndoor skates have persisted in their core habitat at a low abundance since the late 1960s. Currently, numbers of barndoor skate are on the rise, and barndoor skates are now occurring in some areas of the western Scotian Shelf, on Georges Bank, and in offshore waters of Southern New England. There is no evidence of a contraction of range; however, the current abundance, which is lower than the historic abundance, may reflect local reductions in area of occupancy.

Auster and Langton (1999) explain that mobile fishing gear may have a negative impact on the structural components of habitat by: direct removal or damage of epifauna, the reduction of bottom roughness, and the removal of structure forming organisms. The effects of bottom trawling on habitat depend on several factors, including the type of sediment, type of gear used, and the habits of the species living on the bottom. Our knowledge of life history characteristics of the barndoor skate is currently insufficient to analyze adequately any potential negative impacts from bottom trawling. Currently, there is no evidence that such habitat alterations as a result of trawling are having a negative impact on barndoor skates or their egg cases. Therefore, the evidence does not suggest present or threatened destruction, modification or curtailment of the habitat or range of barndoor skate to an extent that threatens its continued existence.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

There is no substantial information that indicates ongoing adverse impacts to the species due to overutilization for commercial, recreational, scientific or educational purposes. Available data suggest that overfishing (directed catch and bycatch) was the major threat to barndoor skate; however, this is now greatly reduced. The elimination of foreign fishing in 1978, as well as increasingly restrictive regulations in other fisheries in which barndoor skate are taken as bycatch, have contributed to this reduction.

NEFSC spring survey indices of barndoor skate abundance and biomass were highest during the 1960s, then declined in the early 1980s. However, since 1990, both the spring and autumn survey indices have steadily increased (NEFSC, 2000). The most recent 3–year survey average (1998–2000) is 0.23 kg/

tow (NEFSC, pers. comm.). An increasing trend has been seen in each of the survey years with the biomass index almost tripling in 3 years. According to the NEFSC, this increase in barndoor skate biomass began when fishing effort was near or at the highest level in almost all fisheries (the late 1980s); therefore, discards do not appear to have been a great factor in reducing population size.

The Skate SAFE Report outlines two types of directed fisheries for skates, the wing fishery and the bait fishery. The bait fishery is described as more of a historical and directed skate fishery (NEFMC, 2002a), involving vessels primarily from southern New England ports that target and land a combination of little skates (≤ 90 percent of landings), and a small percentage of juvenile winter skates (NEFMC, 2001). A seasonal gillnet incidental catch fishery also exists as part of the directed monkfish gillnet fishery; however, this fishery consists of mostly winter skates, which are sold both for lobster bait and as cut wings for processing (NEFMC, 2001).

The wing fishery is more of an incidental fishery. Skates are caught while targeting other species such as multispecies, monkfish and scallops, and are landed if the price is high enough. While the wing fishery considers barndoor skate to be of a sufficient size for processing, there is currently no directed fishery for barndoor skate (either for bait or for wings) and none is planned in the future (NEFSC, 2000). Since barndoor skate populations have been at low levels for many years, little of the recent wing landings would be attributable to this species. Given that wing cutting is labor intensive, many vessels have chosen to optimize their days-at-sea (DAS) by targeting more profitable multispecies rather than taking part in the skate fishery (NEFMC, 2001).

New Bedford, MA lands and processes the greatest amount of skate wings; and it is assumed that more vessels land skate wings as an incidental catch in mixed fisheries rather than a targeted species (NEFMC 2001). According to the Skate SAFE Report, fishermen and dealers claim market limitations as a reason for low participation in the wing fishery. In Rhode Island, many of the companies that experimented with the wing market quickly got out of it, due to the low profit margins, with an 80 percent drop in production since the early 1990s for some dealers (NEFMC 2001). Barndoor skate are reported as getting the lowest ex-vessel prices of the wing skates since they cannot be skinned by a machine (NEFMC 2001).

Discard rates have not been classified by skate species due to difficulty in identification. However, barndoor skate may have been correctly identified due to their large size and distinctive ventral coloration (NEFMC, 2001). The Skate SAFE Report notes that discard rates are generally low, at less than 5 percent of the landings of the targeted species, resulting in estimates of barndoor skate commercial fishery discards of a few hundred metric tons per year. The commercial fishery discard mortality rate for skates and, therefore, the magnitude of total skate discard mortality, is unknown (NEFSC 2000).

According to the SARC, although fishing mortality and natural mortality rates cannot be measured, the small but sustained increases in research survey catches indicate that annual survival rates are currently high enough to offer some recovery. Given this increase, along with the fact that there is no directed fishery and little market demand for barndoor skate, and that the best information available indicates that barndoor skates constitute a small amount of the total skate catch, there is no substantial information that indicates that barndoor skate are threatened or endangered due to overutilization for commercial, recreational, scientific or educational purposes.

C. Disease or Predation

There is no substantial evidence that indicates significant loss due to disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms

Skates can be targeted in the commercial wing and bait fisheries, or they can be caught incidentally in other fisheries.

Incidental catch

The petitioners cite bycatch from commercial fishery gear as the reason for the decline of barndoor skate abundance. The scallop, monkfish, and multispecies fisheries are most likely to encounter barndoor skate and other skate species as bycatch. However, management measures implemented to conserve scallop, monkfish, and multispecies have also provided indirect protection for skates. Management measures implemented by NMFS for other fisheries have reduced fishing mortality, in turn promoting the rebuilding of overfished skate stocks.

Measures in the scallop, monkfish, and multispecies fisheries provide protection for skates. The Scallop FMP restrictions are likely to reduce skate bycatch as the overall bycatch in the scallop fishery is reduced. The FMP outlines several management measures designed to reduce overall bycatch including: DAS reductions, minimum twine top mesh requirements increased from six to eight inches implemented through Scallop Framework 11, as well as reductions of chafing gear. These reductions may reduce total fishing effort, which in turn reduces total bycatch (NEFMC, 2001).

There is an unknown degree of overlap between the monkfish fishery and the skate fishery according to the Skate SAFE Report. The Monkfish FMP was established in November 1999 and consists of limited entry; DAS limits; trip limits; minimum mesh sizes to reduce bycatch of multispecies and other species; and limits on the number of gillnets (NEFMC, 2002a). According to the Skate SAFE Report, under the current regulations, gillnetters fishing in Southern New England are fishing with one-third fewer nets, resulting in a decrease of skate catches. The monkfish and dogfish gillnet fishery, primarily in the Mid-Atlantic region, do not catch as many skates in their gillnets since they are fishing with heavier twine (NEFMC, 2001). It is reported that the fishermen switched to the heavier twine to avoid catching skates (NEFMC 2001). In addition, the Harbor Porpoise Take Reduction Plan requires fishermen west of the 72° 30' line to use the heavier gear to avoid entanglements of harbor porpoise (NEFMC, 2001). To the extent that barndoor skate are present in the area where this heavier gear is used, less bycatch is expected. Estimates of skate bycatch on monkfish trips are currently not available. However, the overall impact of the Monkfish FMP should reduce the amount of skate bycatch (NEFMC, 2001).

The Multispecies FMP is likely to impact skates and the skate fishery more than any other existing FMP. A significant overlap lies between multispecies and skate fisheries and the vessels that participate in these fisheries. Skate bycatch has been reduced in the multispecies fishery due to several years of restrictive management measures. Since the implementation of the multispecies DAS guidelines, multispecies fishing effort has been reduced by 50 percent from baseline levels which occurred before Amendment 5 to the Multispecies FMP. The Multispecies FMP uses both seasonal and year-round closed areas to reduce fishing mortality and to protect spawning stocks of cod, haddock, and yellowtail flounder. Multispecies Framework 33, implemented on May 1, 2000, requires

a large area closure on Georges Bank during the month of May as well as additional 1–month multispecies area closures. These closures provide a degree of protection for skate species by reducing fishing effort overall. However, it is important to note that seasonal and year-round closed areas may result in an effort relocation and perhaps not a complete effort reduction.

The following multispecies gear restrictions also have an impact on skate fishing mortality. A primary restriction is a minimum mesh size requirement for all gillnet and trawl gear. According to the Skate SAFE Report, although there are no known studies on selectivity of mesh for skates, these restrictions undoubtedly have some impact on the size of fish caught. Another restriction is a limit on the number of nets fished by vessels that make day gillnet trips. Regulations implementing the Multispecies FMP also require that any vessel fishing in the Gulf of Maine, Georges Bank, and Southern New England Regulated Mesh Areas in Federal waters, are required to fish under DAS restrictions unless participating in an exempted fishery or are fishing with exempted gear (gear not capable of catching multispecies). An exempted fishery under the Multispecies FMP is one that has been determined to have minimal bycatch of regulated multispecies and will not jeopardize fishing mortality objectives. It is required that the percentage of regulated multispecies bycatch be less than 5 percent by weight of the total catch. For exempted fisheries in the Southern New England Exempted Area, skate bycatch is limited to 10 percent by weight of the total species on board to prevent the bycatch of multispecies that might occur in directed skate fisheries. The multispecies DAS program directly restricts the time available for vessels to fish for skates. Since the majority of skate fishing effort is controlled by the multispecies effort reduction program, reductions in multispecies fishing effort through DAS restrictions have resulted in and will continue to result in proportional reductions in skate fishing effort (NEFMC 2002b).

Currently, as a result of a settlement agreement endorsed by a federal district court in *Conservation Law Foundation* v. *Evans*, 211 F. Supp. 2d 55 D.D.C. May 23, 2002), additional regulatory measures are being implemented to protect species managed under the Multispecies FMP from overfishing. These additional measures, effective as of August 1, 2002, will remain in effect until implementation of Amendment 13 to the Multispecies FMP. The following additional measures have been implemented pursuant to the settlement agreement: A freeze on DAS used by a vessel to the level 20 percent below the highest annual level of DAS used during the fishing years 1996–2000; a restriction on the issuance of new open access hand-gear permits, and a decreased cod, haddock, and yellowtail flounder possession limit under that category; increased gear restriction for gillnets, hook-gear, and trawl nets; restrictions on yellowtail flounder catch. In addition, to be consistent with the court order in the lawsuit, NMFS has increased observer coverage on multispecies vessels to at least 5 percent until Amendment 13 is implemented.

These measures will further aid in the protection of barndoor skate until completion of the Skate FMP. Since the majority of skate fishing occurs under multispecies DAS, any reduction in multispecies fishing effort will proportionally reduce the opportunity to fish for and catch skates. Gear restrictions in the multispecies fishery will reduce skate fishing mortality, and reduce the effort that is applied to the skate fishery. Restrictions in mesh size aid in the selection of certain fish sizes and, therefore, will also have an impact on the size of skates caught, such as juvenile barndoor skate and egg cases. Reduction in the number of gillnets that can be used in the multispecies fishery reduces the amount of gear in the water that is capable of catching skates. Lastly, an increase in observer coverage levels will provide additional information pertaining to the magnitude and species composition of the bycatch of skates in the multispecies fishery. This increased information will be valuable in improving barndoor skate populations and management.

Directed Fisheries

The Skate SAFE Report outlines two types of directed fisheries for skates, the wing fishery and the bait fishery. A limited amount of directed skate fishing is also allowed under the Multispecies FMP. Directed skate gillnet and trawl fisheries are exempt in the portion of the Southern New England Regulated Mesh Area that is south of 40° 10' N. lat. since they have been determined to meet the 5 percent multispecies bycatch criteria for exempted fisheries under the Multispecies FMP. However, this area may limit directed skate fishing to a small portion of the overall range of skate species.

According to the Skate SAFE Report, there are two existing and significant regulatory limitations on the directed skate bait fishery, which include the lobster regulations and the multispecies DAS requirements. Current restrictions outlined in the Skate SAFE Report for the lobster fishery consist of limited access permits, minimum lobster carapace size, prohibition of possession of certain lobsters, or parts, trap specifications, and landing limits for non-trap harvest.

In 1994, NMFS implemented a 5–year moratorium on new entrants into the Exclusive Economic Zone (EEZ) lobster fishery by a limited access permit system (59 FR 31938, June 21, 1994). On December 6, 1999, Federal lobster regulations extended the moratorium indefinitely (64 FR 68227). This moratorium limits the number of people that can participate in the lobster fishery, thus indirectly eliminating the possibility of any future increase in the amount of skates used as bait due to an increase in new entrants to the fishery.

Newly implemented measures are of particular relevance to the skate fishery, including the establishment of six lobster management areas and associated restrictions. The various management areas have different trap limits associated with them. Nearshore management areas have relatively low trap limits; 800 traps in Area 1 versus 1,800 traps in Area 3. Vessel owners may decide to fish in several management areas; however, they must abide by the most restrictive trap limit of the areas they designate. These regulations are designed to limit effort in the lobster fishery. Therefore, any reduction in lobster fishery effort will indirectly reduce the amount of skates needed for use as bait.

The fishery regulations already in place, which have become more restrictive over the past years, as well as various statutory requirements, are expected to continue to aid in the increase in barndoor skate abundance. There is no substantial information that indicates that barndoor skate are threatened or endangered due to the inadequacy of existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

The petitioner expressed concern over inbreeding depression due to the population size of barndoor skate. The potential effects and magnitude of inbreeding depression are dependent upon the genetic composition of the species. Currently, there is no genetic information available for barndoor skate; therefore, we cannot determine at this time if inbreeding depression is a problem. However, it is unlikely that inbreeding depression is a significant issue given the wide geographic range and increasing population size of barndoor skate.

Despite the combination of continued low abundance, suspected low intrinsic rate of increase and suspected late age of maturity, barndoor skates have persisted at low levels in U.S. waters over the past 30–40 years (NEFSC, 2000). Long-lived species tend to be especially prone to excessive mortalities and rapid stock collapse, resulting in a recovery that may take decades. It is recognized that the rebuilding of barndoor skate will be a long and slow process, but the recent and continuing increases seen in abundance and size range indicate that the population is increasing. There is no evidence of any other natural or manmade factors affecting the continued existence of barndoor skate populations.

Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(6) and (20)). Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any state or foreign nation to protect and conserve the species.

After reviewing the best scientific and commercial information available, NMFS has determined that listing of barndoor skate as threatened or endangered under the ESA is not warranted at this time. The following factors all indicate a positive trend for barndoor skate populations: The recent increases in abundance and biomass of barndoor skate observed during surveys; the expansion of known areas where barndoor skate have been encountered; the increases in size range, and; the increase in number of small size barndoor skate collected. This trend is not consistent with a species that is in danger of extinction throughout all or a significant portion of its range or likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Furthermore, the major identifiable threat to the species, overfishing, is currently being reduced by existing regulatory measures affecting several northeast fisheries. In addition to regulatory measures already in place, NMFS intends to continue to work with the Council to fully develop and implement the Skate FMP. NMFS is not relying on the draft Skate FMP as a reason not to list barndoor skate, but rather noting that it is under development and will benefit barndoor skate populations when it is implemented.

NMFS believes that remaining uncertainties regarding the status and population structure of the barndoor skate warrant leaving it on the agency's list of candidate species. If new information becomes available indicating that the species faces threats greater than are currently known, this decision will be revisited to determine whether ESA protection is appropriate.

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Authority

Authority: The authority for this action is the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 20, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–24515 Filed 9–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[ID. 091702C]

Fisheries Off West Coast States and in the Western Pacific;Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for an exempted fishing permit, request for comments.

SUMMARY: NMFS announces receipt of an application for an exempted fishing permit (EFP) from the California Department of Fish and Game. This EFP application applies to vessels with valid California State delivery permits fishing for flatfish with small footrope trawl gear in Federal waters off the state of California. If awarded, the EFP would allow vessels with a Federal limited entry permit to land federally managed groundfish species in excess of cumulative trip limits and to sell flatfish catch for profit, provided that the vessels carry state-sponsored observers. Observers would collect data that are otherwise not available shoreside. This EFP proposal is intended to promote the objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by providing data that can be used to enhance management of the groundfish fishery.

DATES: Comments must be received by October 15, 2002.

ADDRESSES: Copies of the EFP application are available from Becky

Renko, Northwest Region, NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko (206)526–6140.

SUPPLEMENTARY INFORMATION: This action is authorized by the FMP and implementing regulations at 50 CFR 600.745 and 50 CFR 660.350.

If awarded, the EFP would allow vessels with a Federal limited entry permit to land federally managed groundfish species in excess of cumulative trip limits and to sell flatfish catch for profit, provided that these vessels carry state-sponsored observers. Observers would collect data that are otherwise not available shoreside.

This exempted fishing activity is designed to measure bycatch rates of shelf rockfish species taken with small footrope trawl gear used to target flatfish in Federal waters off the State of California. Fishing would be restricted to areas outside of 3 miles and in less than 70 fathoms (130 meters) of water. Flatfish catch under this EFP will be limited to 70,000 lb (31,752 kg) per month. No more than 40,000 lb (18,144 kg) per month may be species other than Pacific sand dab, English sole, rock, and sand sole, or unspecified flatfish. Of the 40,000 lb (18,144 kg) per month, no more than 15,000 lb (6,804 kg) may be petrale sole. All groundfish caught under this EFP would be counted against the OYs for those species and so will not result in total harvest above expected levels. Because the bocaccio rockfish OY has not been taken (67 FR 44778, July 5, 2002) special provisions will be necessary to assure that the EFP is ended if more than negligible amounts of bocaccio rockfish are taken.

If the EFP is issued, approximately 20 vessels would be eligible to participate, with up to 6 observers being deployed at one time.

Flatfish species are abundant and commercially important off California; however, the harvest of these species is constrained by efforts to rebuild overfished species, particularly bocaccio rockfish. Fishers believe that the flatfish fishery can be prosecuted without catching bocaccio rockfish and with a much lower shelf rockfish bycatch rate than is currently assumed.

Data collected during this project are expected to benefit the management of the groundfish fishery by: (1) Providing information on catch rates of incidentally caught species by fishing location, (2) allowing for the collection of biological data that is otherwise not available from landed catch, and (3) providing data that can be used to evaluate the full retention of rockfish as a management approach. The information gathered through this EFP may lead to future rulemaking.

NMFS determined that the proposal warranted further consideration and, therefore, consulted with the Pacific Fishery Management Council (Council). The Council considered the EFP application during its June and September 2002, meetings and recommended that NMFS issue the EFP. NMFS intends to approve the EFP fishing for October through December 2002. The applicant also requested that the EFP be effective for the months of May through October 2003. However, decisions regarding the issuance of EFPs for 2003 will be made following the Council's October-November 2002 meeting. A copy of the application is available for review from NMFS (*see* **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 23, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–24514 Filed 9–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 091802B]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The 81st meeting of the Western Pacific Fishery Management Council's Scientific and Statistical Committee (SSC) will convene October 8 through 10, 2002, in Honolulu, HI. The Western Pacific Fishery Management Council (Council) Advisory Panels will meet on October 10 through 12, 2002, and the Council will hold its 115th meeting October 14 through 17, 2002, in Honolulu, HI.

DATES: The SSC meeting will be held on October 8, 2002, from 9 a.m. to 5 p.m. and on October 9–10, 2002, from 8:30 a.m. to 12 noon. The Commercial, Recreational, Subsistence/Indigenous and Ecosystem and Habitat Advisory Panels will meet on October 10, 2002, from 2 p.m. to 5 p.m., on October 11 from 8:30 a.m. to 5 p.m., and on October 12, 2002, from 9 a.m. to 12 noon. The Council's Standing Committees will meet on October 14, 2002, from 8 a.m. to 5:30 p.m. The full Council meeting will be held on October 15, 2002, from 9 a.m. to 5 p.m., October 16 from 8:30 a.m. to 5 p.m., and October 17, 2002, from 8:30 a.m. to 12 noon. See **SUPPLEMENTARY INFORMATION** for specific dates and times for these meetings.

ADDRESSES: The 81st SSC, the Advisory Panel, and the Standing Committee meetings will be held at the Council Office Conference Room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: 808 522–8220. The Council meeting will be held at the Pier 11 Gallery, 700 Fort Street, Aloha Tower, Honolulu, HI; telephone: 808–522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION:

Dates and Times

SSC

The SSC will discuss and may make recommendations to the Council on the agenda items below. The order in which agenda items will be addressed may change. Public comment periods will be provided throughout the meeting agenda. The SSC will meet as late as necessary to complete scheduled business.

Tuesday, October 8, 2002

1. Introduction
2. Approval of draft agenda and assignment of rapporteurs
3. Approval of the minutes of the 80th meeting
4. NMFS cetacean surveys in the Hawaiian Exclusive Economic Zone
5. Applied social impact analysis
6. Crustaceans fisheries (Northwestern Hawaiian Islands (NWHI) Lobsters
   A. Report on NWHI lobster research
7. Bottomfish fisheries
   A. Hawaii Institute of Marine Biology research and Hawaii Undersea Research Laboratory research
   B. Management of Guam offshore bottomfish
8. Ensuring management decisions uses best available science

Wednesday, October 9, 2002

9. Pelagic fisheries
   A. Hawaii and American Samoa 2002 quarterly longline reports
   B. American Samoa limited entry program
   C. American Samoa longline fishery scientific data program
   D. Recreational fisheries
   (1) Hawaii Marine Recreational Fisheries Survey

(2) International Billfish Angling Survey and the Billfish Tagging Program
(3) Statutory data needs for fishery management
E. Sea Turtle conservation and management
(1) Honolulu Lab mitigation turtle research
(2) New Biological Opinion
(3) Pacific sea turtle recovery plan teams
(4) EIS for Hawaii Section 10 permit
F. International meetings and issues
(1) Standing Committee on Tuna and Billfish (SCTB15)
(2) Prep-Con Scientific Coordinating Group
(3) Inter-American Tropical Tuna Commission
G. Informational needs for pen raising of tuna

Thursday, October 10, 2002

10. Ecosystems and habitat
A. Valuation of Hawaii's coral reef resources
B. Hawaii marine management gap analysis
C. State of Hawaii reef fish catch and effort data
D. New minimum sizes for Hawaii reef fish
E. Pacific Regional Live Reef Fish Trade Management Workshop
11. Other business
12. Summary of recommendations to the Council

Advisory Panels

The Commercial, Recreational, Subsistence/Indigenous and Ecosystem and Habitat sub-panels will meet jointly on Thursday, October 10, 2002, from 2 p.m. to 5 p.m. Sub-panels will meet individually on Friday, October 11, 2002, from 8:30 a.m. to 5 p.m. but reconvene jointly on Saturday, October 12, 2002, from 9 a.m. to 12:00 noon to finalize recommendations. The agenda for the Advisory Panel meetings will include the items listed below. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Advisory Panels will meet as late as necessary to complete scheduled business.

Thursday, October 10, 2002

1. Welcome and introductions
2. Advisory appointments
3. Report on tuna quality, seafood safety, and Food and Drug Administration regulations
4. NMFS International Billfish Angling Survey and tagging program
5. Report on recreational fisheries
A. Regional/national/world round up
B. Fisheries Data Management Plan
6. Commercial round up: regional/national/world
7. Fishery development and research
A. Community Demonstration Projects
B. Report on Saltonstall-Kennedy Funding
C. Pelagic Fisheries Research Program
D. Cooperative Research Plans for Western Pacific Region

Friday, October 11, 2002

8. Sub-panel break-out sessions to discuss issues and develop recommendations

Saturday, October 12, 2002

9. Joint panel session to review and finalize recommendations to the Council

Committee Meetings

The following Standing Committees of the Council will meet on October 14, 2002. Enforcement/Vessel Monitoring System (VMS) from 8 a.m. to 10 a.m.; Fishery Rights of Indigenous People from 9 a.m. to 10 a.m.; International Fisheries/Pelagics from 10 a.m. to 12 noon; Bottomfish from 1:30 p.m. to 3 p.m.; Crustaceans from 1:30 p.m. to 3 p.m.; Ecosystem and Habitat from 3 p.m. to 4:30 p.m.; and Executive/Budget and Program from 4:30 p.m. to 6 p.m.

In addition, the Council will hear recommendations from its advisory panels, plan teams, scientific and statistical committee, and other ad hoc groups. Public comment periods will be provided throughout the meeting agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

The agenda during the full Council meeting will include the items listed below.

Tuesday, October 15, 2002

1. Introductions
2. Approval of agenda
3. Approval of 113th and 114th meeting minutes
4. Island reports
A. American Samoa
B. Guam
C. Hawaii
D. Commonwealth of the Northern Mariana Islands
5. Federal Fishery agency and organization reports
A. Department of Commerce
(1) NMFS
(a) Southwest Region, Pacific Islands Area Office (PIAO)
(b) Southwest Fisheries Science Center, La Jolla and Honolulu Laboratories
(2) NOAA General Counsel, Southwest Region
(3) National Ocean Service
(a) National Marine Sanctuaries, NWHI Reserve Designation
B. Department of the Interior
(1) U.S. Fish and Wildlife Service
C. U.S. State Department
6. Enforcement and VMS
A. U.S. Coast Guard activities
B. NMFS activities
C. NWHI Reserve VMS projectG. Status of violations
7. Crustaceans fisheries
A. NWHI lobster research
8. Observer and monitoring programs
A. NMFS PIAO
(1) American Samoa longline fishery scientific data program
(2) Bottomfish
(3) Hawaii longline
B. Native observer program

Wednesday, October 16, 2002

9. Pelagic fisheries
A. Quarterly 2002 Hawaii and American Samoa longline reports
B. American Samoa limited entry program
C. Recreational fisheries
(1) Hawaii Marine Recreational Fisheries Survey
(2) Managing Hawaii's recreational fisheries
D. Sea turtle conservation and management
(1) Honolulu Lab mitigation turtle research
(2) New Biological Opinion
(3) Pacific sea turtle recovery plan
(4) Litigation
E. International meetings and issues
(1) Report on the 15th meeting of the SCTB15
(2) Prep-Con Scientific Coordinating Group
F. Pen raising of tuna off Big Island
G. Fishing in Pacific Remote Island Areas (PRIA)
(1) New rule for troll and handline for pelagic vessels off the PRIA)
(2) Activities at Palmyra Atoll
10. Bottomfish
A. Guam offshore bottomfish management
B. Report on Main Hawaiian Island catch and effort
11. Indigenous fishery rights
A. Status of marine conservation plans
B. Community demonstration projects program
(1) Selection of projects from first solicitation
(2) Second solicitation for program
C. Community development program
12. Program planning
A. Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) reauthorization
B. Status of NMFS Pacific Island Region
C. NOAA strategic planning
D. Social science research planning

E. Report on statutory data needs for fishery management
F. Education initiatives

Thursday, October, 17, 2002

13. Ecosystems and habitats
A. Report on State of Hawaii NWHI Marine Reserve
B. Reserve request for NWHI bottomfish impact analysis
C. Proposed designation of NWHI as a National Marine Sanctuary
D. Report on Hawaii reef fish commercial catch data
E. Report on US Coral Reef Task Force
F. Report on Caribbean Coral reef Fisheries Management Workshop
G. Status of NWHI reef assessment and monitoring program 2002
H. Report on Secretariat for the Pacific Community Pacific Regional Live Reef Fish Trade Management Workshop
14. Administrative matters
A. Financial reports
B. Administrative reports
C. Upcoming meetings and workshops including the 116th Council meeting
D. Advisory Panel, SSC, Plan Team, NWHI Reserve and Sea Turtle Working Group Appointments
15. Election of officers
16. Other business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 23, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–24521 Filed 9–26–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 188
Friday, September 27, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will meet in Prather, California. The purpose of the meeting is to discuss and to receive project proposals regarding the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) for expenditure of Payments to States Fresno County Title II funds.

DATES: The meeting will be held October 15, 2002.

ADDRESSES: 29688 Auberry Road, Prather, California. The meeting will be held at the Sierra National Forest, High Sierra District Ranger office, 29688 Auberry Road, Prather, California 93651. Send written comments to Nancy Fleenor, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *nfleenor@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Nancy Fleenor, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355 ext. 3350.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public sessions will be provided and individuals who made written requests by October 15, 2002 will have the opportunity to address the Committee at those sessions. Agenda items to be covered include: (1) Review and approve the September 17, 2002 meeting notes; (2) discuss new business of the RAC if applicable; (3) discuss the progress of the 2001 funded projects; (4) consideration of Title II Project proposals from the public and/or the RAC members; (5) confirm the date, location and agenda of the next meeting; (6) public comment.

Dated: September 18, 2002.

Ray Porter,

District Ranger.

[FR Doc. 02–24545 Filed 9–26–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Northeast Texas Electric Cooperative, Inc.; Notice of Availability of a Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a request from Northeast Texas Electric Cooperative, Inc. (NTEC), for assistance from RUS to finance its share of the construction of a combined cycle combustion turbine generating station and associated facilities in Harrison County, Texas.

FOR FURTHER INFORMATION CONTACT: Dennis E. Rankin, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone: (202) 720–1953 or e-mail: *drankin@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: Entergy Power Generation Corporation is constructing a 570 MW combined cycle combustion turbine generating station in Harrison County, Texas. The project is located approximately 8 miles southwest of Marshall, Texas on State Highway 43. Ancillary facilities include the utilization of the City of Longview treated municipal wastewater via a new 17-mile pipeline. The use of water from Caddo Lake has been subsequently dropped from further consideration. Transmission line facilities include the construction of 5.5-miles of 345 kV transmission line from the Pirkey Substation to the Harrison County Power Project and the LeBrock Switching Station. A 0.5-mile interconnection line will be constructed to loop the existing Pirkey-Tenaska 345 kV transmission line through the LeBrock Switching Station. The transmission facilities will be constructed, operated and maintained by Southwestern Electric Power Company.

Based on its environmental and engineering assessment of the project, RUS has concluded that the construction and operation of the proposed facilities would have no significant impact to the quality of the human environment. Therefore, RUS will not prepare an environmental impact statement for its action related to this project.

Copies of the document are available from RUS at the address provided herein.

Dated: September 23, 2002.

Sylvia M. Green,

Acting Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 02–24596 Filed 9–26–02; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 27, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 7, July 5, July 19, and August 2, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled

published notice (67 FR 39337, 44808, 47508, and 50416) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Handle Assembly, 3895–01–135–2538.

NPA: Knox County ARC, Knoxville, Tennessee.

Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Product/NSN: Case, Crash Rescue Kit, 4210–00–NSH–0001.

NPA: Development Workshop, Inc., Idaho Falls, Idaho.

Contract Activity: Bureau of Land Management, NIFS, Boise, Idaho.

Product/NSN: Junior Wooden Kitchen Set, M.R. 808.

NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

Services

Service Type/Location: Custodial Service, Basewide, Schriever Air Force Base, Colorado.

NPA: Professional Contract Services, Inc., Austin, Texas.

Contract Activity: USAF, 50 CONS/LGCZW, Schriever Air Force Base, Colorado.

Service Type/Location: Janitorial & Related Services, U.S. Border Patrol Station, Air Operations, Yuma, Arizona, U.S. Border Patrol Station, Maintenance Facility, Yuma, Arizona, U.S. Border Patrol Station, Station Office, Yuma, Arizona, U.S. Border Patrol Station, Traffic Check Point, Highway #78, Arizona, U.S. Border Patrol Station, Traffic Check Point, Highway #95, Arizona, U.S. Border Patrol Station, Traffic Check Point, Interstate 8, Arizona, U.S. Border Patrol Station, Wellton Office, Wellton, Arizona, U.S. Border Patrol Station Blythe Office (Janitorial and Grounds Maintenance), Blythe, California.

NPA: Yuma WORC Center, Inc., Yuma, Arizona.

Contract Activity: Immigration and Naturalization Service, DOJ.

Service Type/Location: Mailroom Support Services, BLM—Arizona State Office, Phoenix, Arizona.

NPA: The Centers for Habilitation/TCH, Tempe, Arizona.

Contract Activity: Bureau of Land Management—Arizona, Phoenix, Arizona.

Service Type/Location: Mess Attendant, Andersen Air Force Base, Guam.

NPA: Able Industries of the Pacific, Tamuning, Guam.

Contract Activity: USAF, 36th CONS/LGCD, Andersen Air Force Base, Guam.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–24631 Filed 9–26–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received on or Before: October 27, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Administrative Services—Human Resources, Department of Interior—South, Office of Surface Mining, Washington, DC.

NPA: ServiceSource, Inc., Alexandria, Virginia.

Contract Activity: Department of Interior—South, Washington, DC.

Service Type/Location: Base Supply Center & Individual Equipment

Element, Ellsworth Air Force Base, South Dakota.

NPA: BH Services, Inc., Box Elder, South Dakota.

Contract Activity: Ellsworth Air Force Base, South Dakota.

Service Type/Location: Custodial Service, Building 4050, Fort Polk, Louisiana.

NPA: Vernon Sheltered Workshop, Leesville, Louisiana.

Contract Activity: Directorate of Contracting, Fort Polk, Louisiana.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Clock, Wall, Battery, 6645–01–467–8477.

NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, Illinois.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: Clock, Atomic, Standard, Thermometer, 6645–00–NIB–0076.

NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, Illinois.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: Label, Pressure-Sensitive Adhesive, 7530–00–577–4373, 7530–00–577–4374, 7530–00–577–4375.

NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–24632 Filed 9–26–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[I.D. 092002B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Applications and Reports for Scientific Research and Enhancement Permits Under the Endangered Species Act.

Form Number(s): None.

OMB Approval Number: 0648–0402.

Type of Request: Regular submission.

Burden Hours: 6,310.

Number of Respondents: 163.

Average Hours Per Response: 40 hours for a permit application; 10 hours for a permit modification; 10 hours for an annual report; and 20 hours for a final report.

Needs and Uses: The Endangered Species Act (ESA) prohibits the taking of endangered species. Section 10 of the ESA allows for certain exceptions to this prohibition, such as a taking that would be incidental to an otherwise lawful activity. NOAA has issued regulations to provide for application and reporting for exceptions related to scientific research or to enhance the propagation of threatened or endangered species. The information is used to evaluate the proposed activity (permits) and on-going activities (reports) and is necessary for NOAA to ensure the conservation of the species under the ESA.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and State, Local, or Tribal Government.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 19, 2002.

Gwellnar Banks,

Management Analyst, Officer, Office of the Chief Information Officer.

[FR Doc. 02–24516 Filed 9–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Watch Duty-Exemption and 7113 Jewelry Duty-Refund Program Forms.

Agency Form Numbers: ITA–340P, ITA–360P, and ITA–361P.

OMB Number: 0625–0134.

Type of Request: Regular Submission.

Burden: 66 hours.

Number of Respondents: 11.

Avg. Hours Per Response: 10 minutes.

Needs and Uses: Pub. L. 97–446, as amended by Pub. L. 103–465, requires the Department of Commerce and the Interior to administer the distribution of duty-exemptions and duty-refunds to watch producers in the U.S. insular possessions and the Northern Mariana Islands. Pub. L. 106–36, enacted in 1999, extended the duty-refund benefit for any jewelry within heading 7113 of the Harmonized Tariff Schedule of the United States which is the product of the U.S. Territories and the Northern Mariana Islands in accordance with the provisions of the note in chapter 71 and additional U.S. note 5 to chapter 91. The primary consideration in collecting information is the enforcement of the law and the information gathered is limited to that necessary to prevent abuse of the program and to permit a fair and equitable distribution of its benefits. Form ITA–340P provides the data to assist in verification of duty-free shipments of watches into the United States and make certain the allocations are not exceeded. Forms ITA–360P and ITA–361P are necessary to implement the duty-refund program for the watch and jewelry producers. Because the duty-refund benefit has been changed from an annual benefit to a biannual benefit, Forms ITA–360P and ITA–361P will now also be used for the distribution of an interim duty-refund benefit.

Affected Public: Businesses or other for-profits.

Frequency: Semi-Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution, NW., Washington, DC 20230 or via internet at *dHynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: September 23, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–24536 Filed 9–26–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Application of License to Enter Watches and Watch Movements into the Customs Territory of the United States.

Agency Form Number: ITA–334P.

OMB Number: 0625–0040.

Type of Request: Regular Submission.

Burden: 14 hours.

Number of Respondents: 11.

Avg. Hours Per Response: 1 hour.

Needs and Uses: Public Law 97–446, as amended by Public Law 103–465, requires the Departments of Commerce and the Interior to administer the distribution of duty-exemptions and duty-refunds to watch producers in the U.S. insular possessions and the Northern Mariana Islands. Public Law 106–36, enacted June 25, 1999, provides for the distribution of duty-refund benefits for any jewelry within heading 7113 of the Harmonized Tariff Schedule of the United States which is the product of the U.S. Territories and the Northern Mariana Islands in accordance with the new provisions of the note in chapter 71 and additional U.S. note 5 to chapter 91. The primary consideration in collecting information is the enforcement of the laws and the information gathered is limited to that necessary to prevent abuse of the program and to permit a fair and equitable distribution of its benefits. Form ITA–334P is the principal program form used for recording the operational data on the basis of which program entitlements are distributed among the producers (and the provision of which to the Departments constitutes their application for these entitlements). The form is completed by watch and watch movement manufacturers and has been modified with special instructions for completion by the new jewelry manufacturers. Because the duty-refund benefit has been changed from an annual benefit to a biannual benefit, Form ITA–334P is also used, with modified instructions, to gather the information needed to calculate the interim duty-refund certificate for the jewelry and watch manufacturers.

Affected Public: Businesses or other for-profits.

Frequency: Semi-Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution, NW., Washington, DC 20230 or via internet at *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: September 23, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–24537 Filed 9–26–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2001 Panel of the Survey of Income and Program Participation, Wave 7 Topical Modules.

Form Number(s): SIPP 21705(L) Director's Letter; SIPP/CAPI Automated Instrument, SIPP 21003 Reminder Card.

Agency Approval Number: 0607–0875.

Type of Request: Revision of a currently approved collection.

Burden: 119,378 hours.

Number of Respondents: 78,750.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Wave 7 Topical Module interview for the 2001 Panel of the Survey of Income and Program Participation (SIPP). We also request approval for a few replacement questions in the reinterview instrument. The core SIPP instrument and reinterview instrument were cleared previously. The reinterview instrument will be used for quality control purposes.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having durations of 3 to 4 years. The 2001 SIPP Panel is scheduled for three years and will include nine waves beginning February 1, 2001.

The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as ''topical modules.'' The topical modules for the 2001 Panel Wave 7 are Informal Caregiving, Children's Well-Being, Retirement and Pension Plan Coverage, Annual Income and Retirement Accounts, and Taxes. Wave 7 interviews will be conducted from February through May 2003.

Data provided by the SIPP are being used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture. The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the

SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 23, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–24538 Filed 9–26–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Forged Stainless Steel Flanges From India; Preliminary Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of new shipper review.

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on certain forged stainless steel flanges (stainless steel flanges) from India (A–533–809) manufactured by Metal Forgings Private Limited/Metal Rings and Bearing Races Limited (Metal Forgings). The period of review (POR) covers the period January 1, 2001 through July 31, 2001. We preliminarily determine that Metal Forgings made no sales of stainless steel flanges below the normal value (NV).

EFFECTIVE DATE: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam, Mike Heaney, or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230, telephone (202) 482–5222, (202 482–4475, or (202 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

All citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreement Act (URAA), and all citations to the Department's regulations are to 19 CFR Part 351 (April 1, 2001).

Background

On February 9, 1994, the Department published the antidumping duty order on stainless steel flanges from India (59 FR 5994). On November 29, 2001, in response to a timely request by Metal Forgings, the Department published the notice of initiation of this new shipper review of Metal Forgings covering the period January 1, 2001 through July 31, 2001 (66 FR 59568). A noted in the initiation notice, pursuant to 19 CFR 351.214(b), Metal Forgings certified in its August 31, 2001 submission that it did not export subject merchandise to the United States during the period of the investigation (POI) (July 1, 1992 through December 31, 1992), and that it was not affiliated with any exporter or producer of the subject merchandise to the United States during the POI. Metal Forgings submitted documentation establishing the date on which it first shipped this subject merchandise for export to the United States, the volume shipped, and the date of the first sale to an unaffiliated customer in the United States.

The POR has been defined so as to capture the dates of sale, shipment, and entry. On June 6, 2002, we extended the time limit for the preliminary results of this new shipper review to September 19, 2002 (67 FR 38932).

Scope of the Review

The products under review are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of stainless steel flanges. They are weld-neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the review.

Period of Review

The POR is January 1, 2001, through July 31, 2001. We defined the POR so as to include the dates of sale, shipment, and entry.

Fair Value Comparisons

To determine whether sales of flanges from India were made in the United States at less than fair value, we compared the export price (EP) to the normal value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Tariff Act, we calculated EPs and compared these prices to weighted-average normal values.

Export Price (EP)

Metal Forgings reported making only EP sales to the United States. In accordance with section 772 of the Tariff Act, we calculated an EP for each sale. Section 772(a) of the Tariff Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. We calculated EP based on prices charged to the first unaffiliated customer in the United States. We used the date of invoice as the date of sale. We based EP on the packed C&F, CIF duty paid, FOB, or ex-dock duty paid prices to the first

unaffiliated purchasers in the United States. We did not add amounts for duty drawback pursuant to section 772(c)(1)(B) of the Tariff Act because Metal Forgings failed to the demonstrate that the import duty and claimed rebate were directly linked to and dependent upon one another, and also failed to show that it made sufficient imports of the imported material to account for the duty drawback claimed for the export of the manufactured product. *See Stainless Steel Round Wire From India; Final Determination of Sales at Less Than Fair Value,* 64 FR 17319, 17320 (April 9, 1999), at comment 1. *See* also *Final Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods from Korea,* 64 FR 13169, 13172 (March 17, 1999)). Concerning the Department's test for acceptable duty drawback adjustment claims and, in particular, the insufficiency of a mere reliance by the Department on the Indian Government's passbook rates for pre-determined import content, *see Viraj Group* v. *United States* 162 F. Supp.2d 656, 667–68 (CIT, 200;__).

We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act, including: foreign inland freight, foreign brokerage and handling, ocean freight, and marine insurance.

Normal Value

A. Viability

In order to determine whether there is sufficient volume of sales in the home market to serve as a viable basis for calculating NV (the viability criteria being whether the aggregate volume of home market sales of the foreign like product during the POR is equal to or greater than five percent of the aggregate volume of U.S. sales or subject merchandise during the POR), we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Since we found no reason to determine that quantity was not the appropriate basis for these comparisons, we did not use value as the measure. *See* 351.404(b)(2).

We based our comparisons of the volume of U.S. sales to the volume of home market sales or reported stainless steel flange weight, rather than on number of pieces. The record demonstrates that there can be large differences between the weight (and corresponding cost and price) of stainless steel flanges based on relative sizes, so comparisons of aggregate data would be distorted for these products if volume comparisons were based on the number of pieces.

We determined that the home market was viable because Metal Forging's home market sales were greater than 5 percent of its U.S. sales based on aggregate volume by weight *See* 351.404(b) of the Department's regulations.

B. Arm's Length Sales

Since no information on the record indicates any comparison market sales to affiliates, we did not use an arm's-length test for comparison market sales.

C. Product Comparisons

We compared Metal Forgings U.S. sales with contemporaneous sales of the foreign like product in the home market. We considered stainless steel flanges identical based on grade, type, size, pressure rating and finish. We used a 20 percent difference-in-merchandise (DIFMER) cost deviation cap as the maximum difference in cost allowable for similar merchandise, which we calculated as the absolute value of the difference between the U.S. and comparison market variable costs of manufacturing divided by the total cost of manufacturing of the U.S. product.

D. Level of Trade

In accordance with section 773(a)(1)(B) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP. The LOT in the comparison market is that of the starting-price sales in the comparison market. With respect to U.S. price for EP transactions, the LOT is also that of the starting-price sale, which is usually from the exporter to the importer.

To determine whether comparison market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. In analyzing the selling activities of the respondents, we did not note any significant differences in functions provided in any of the markets. We also noted that Metal Forgings sold to a similar customer base (OEMs and distributors) in both markets. Based upon the foregoing, we have determined that Metal Forgings made sales in both markets at the same LOT for its EP sales as for its comparison market sales. Accordingly, because we find the U.S. sales and comparison market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) is warranted.

E. Comparison Market Price

We based comparison market prices on the packed, ex-factory prices to the unaffiliated purchasers in the comparison market. We made adjustments for differences in packing, where applicable, in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act. Metal Forgings reported no home market movement expenses.

Finally, we made an adjustment for differences between U.S. and home market credit expenses.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period January 1, 2001 through July 31, 2001 to be as follows:

Manufacturer/exporter	Margin (percent)
Metal Forgings Pvt. Ltd.	0.06 (*de minimis*)

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of Publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. The Department will issue the final results of this administrative review, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Upon completion of this administrative review, the Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment

instructions directly to the Customs Service within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct the Customs Service to assess the resulting assessment rate against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

In accordance with 19 CFR 351.212(b)(1), we will calculate assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total quantity (in kilograms) of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of merchandise of that manufacturer/exporter made during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of stainless steel flanges from India entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or any previous reviews, the cash deposit rate will be 162.14 percent, the ''all others'' rate established in the LTFV investigation (59 FR 5994) (February 9, 1994).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: September 19, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–24478 Filed 9–26–02; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–833]

Notice of Amended Final Affirmative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final affirmative countervailing duty determination.

SUMMARY: On August 30, 2002, the Department of Commerce published in the **Federal Register** the *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55805. On September 3, 2002, the Government of Brazil, Companhia Siderurgica Belgo-Mineira, and Gerdau S.A. filed allegations of ministerial errors; on September 9, 2002, the petitioners filed a response to the allegations. Based on our review of the comments received from all parties regarding potential ministerial errors, we have revised the estimated countervailing duty rate for Gerdau S.A., as well as the ''All Others'' rate. The revisions to the estimated countervailing duty rates are listed below in the ''Amended Final Determination'' section.

EFFECTIVE DATE: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0116.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to 19 CFR part 351 (April 2002).

Scope of Investigation

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter (''subject merchandise'' or ''wire rod'').

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the *Harmonized Tariff Schedule of the United States* (''HTSUS'') definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. Grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

Grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20

microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is calendar year 2000.

Amended Final Determination

In accordance with section 705(d) of the Act, on August 30, 2002, the Department published in the **Federal Register** the *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55805. Subsequently, on September 3, 2002, the Government of Brazil, Gerdau S.A. (''Gerdau''), and Companhia Siderurgica Belgo-Mineira (collectively, ''respondents'') submitted timely ministerial error allegations pursuant to 19 CFR 351.224(c)(2). On September 9, 2002, the petitioners (Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.) submitted a rebuttal to the respondents' allegations.

After analyzing the submissions, we have determined in accordance with section 705(e) of the Act and 19 CFR 351.224 that we made a ministerial error in the margin calculations for Gerdau. Specifically, we inadvertently utilized a U.S. dollar denominator for Gerdau's Program of Social Integration and Social Contributions of Billings calculation instead of a Brazilian Reais denominator as was appropriate.

For a detailed discussion of the ministerial error allegations and the Department's analysis, *see* September 23, 2002 memorandum from Team to Richard W. Moreland, Deputy Assistant Secretary entitled *Ministerial Error Allegations*, which is on file in the Department's Central Records Unit in Room B–099 of the main Department building.

Therefore, we are amending the final determination for the countervailing duty investigation of carbon and certain alloy steel wire rod from Brazil to reflect the correction of the above-noted ministerial error. The revised total estimated net subsidy rate for each company is as follows:

Producer/exporter	Net subsidy rate
Companhia Siderurgica Belgo-Mineira	6.74
Gerdau S.A	2.76
All Others	5.64

Suspension of Liquidation

In accordance with section 705(c)(1)(C) of the Act, we are directing the Customs Service (''Customs'') to continue suspending liquidation on all imports of subject merchandise from Brazil that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** Customs shall require a cash deposit or the posting of a bond equal to the margin/subsidy rates indicated in the chart above. These suspension of liquidation instructions will remain in effect until further notice.

We will issue a countervailing duty order if the International Trade Commission (''ITC'') issues a final affirmative injury determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our amended final determination.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the final reminder to parties subject to an Administrative Protective Order (''APO'') of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: September 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–24624 Filed 9–26–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091902G]

Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT); Fall Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: In preparation for the 2002 ICCAT meeting, the Advisory Committee to the U.S. Section to ICCAT will hold its annual fall meeting in October 2002.

DATES: The open session will be held on October 14, 2002, from 8:30 a.m. to 1:30 p.m. Closed sessions will be held on October 14, 2002, from 3:00 p.m. to 6:15 p.m., October 15, 2002, from 8:30 a.m. to 5:30 p.m., and October 16, 2002, from 8:45 a.m. to 12:00 p.m. Written comments should be received no later than October 7, 2002.

ADDRESSES: The meeting will be held at the Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910. Written comments should be sent to Erika Carlsen at NOAA Fisheries/SF4, Room 13137, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Erika Carlsen, 301-713-2276.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in two open sessions to consider information on stock status of highly migratory species and 2002 management recommendations of ICCAT's Standing Committee on Research and Statistics (SCRS). Also in the open sessions, the Advisory Committee will review the results of recent meetings, including the Advisory Committee summer workshop on improving Atlantic bigeye, albacore, yellowfin and skipjack (BAYS) tunas data monitoring and reporting and the Atlantic white marlin ESA status review, ICCAT's working group meeting on integrated monitoring measures, and ICCAT's working group meeting on measures to combat IUU fishing. The Committee will also discuss other ICCAT-related activities. Further, in open session, the Committee will review the implementation of 2001 and prior ICCAT recommendations and resolutions and will receive an overview of implementation of recommendations for research and management resulting from its Spring 2002 Species Working Group meeting. The only opportunity for public comment will be during the October 14, 2002, open session. Written comments are encouraged and, if mailed, should be received by October 7, 2002 (*see* **ADDRESSES**). Written comments can also be submitted during the open sessions of the Advisory Committee meeting.

The Advisory Committee will go into executive session on October 14, 2002, after the adjournment of the open session, on October 15, 2002, and on the morning of October 16, 2002, to discuss sensitive information relating to upcoming international negotiations. These sessions are not open to the public.

Please be reminded that NMFS expects members of the public to conduct themselves appropriately for the duration of the meeting. At the beginning of the public comment session, an explanation of the ground rules will be provided (*e.g.*, alcohol in the meeting room is prohibited, speakers will be called to give their comments in the order in which they registered to speak, each speaker will have an equal amount of time to speak, and speakers should not interrupt one another). The session will be structured so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Those not respecting the ground rules will be asked to leave the meeting.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Erika Carlsen at (301) 713-2276 at least 5 days prior to the meeting date.

Dated: September 23, 2002.

Virginia M. Fay,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–24520 Filed 9–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091902A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Ad Hoc Vessel Monitoring System (VMS) Committee will hold a meeting which is open to the public.

DATES: The meeting will convene at 10 a.m. on Friday, October 11, 2002, and adjourn when business for the day is completed.

ADDRESSES: The meeting will be held in the West Conference Room at the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384; (503) 820–2280.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop a draft regulatory package to require VMS systems for vessels participating in West Coast groundfish fisheries.

Although nonemergency issues not contained in the meeting agenda may come before the Ad Hoc VMS Committee for discussion, those issues may not be the subject of formal Ad Hoc VMS Committee action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Ad Hoc VMS Committee's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820-2280 at least 5 days prior to the meeting date.

Dated: September 19, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–24518 Filed 9–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090502A]

Endangered Species; File No. 1389

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Stephen J. Morreale, Department of Natural Resources, Cornell University, Ithaca, NY 14853 has been issued a permit to take loggerhead, Kemp's ridley, green and leatherback sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room

13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Assistant Regional Administrator for Protected Resources, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9388; fax (978)281–9371.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On July 12, 2002, notice was published in the **Federal Register**(67 FR 46178) that a request for a scientific research permit to take loggerhead, Kemp's ridley, green and leatherback sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The purpose of the research, as stated in the application, is to re-institute a long-term mark- recapture study in order to monitor the population levels and health status of sea turtles inhabiting the Long Island Sound and Peconic Bay Estuaries. Because these protected coastal waters are extremely important foraging areas for juvenile sea turtles, the establishment of a new research program will provide an ideal opportunity to gauge the trends and status of populations of sea turtles, and also to assess the health of the turtles and their critical ecosystems. This will be done by capturing sea turtles in pound nets then measuring, weighing, tagging, sampling blood and skin, and releasing them.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 20, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–24517 Filed 9–26–02; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Meeting

TIME AND DATE: Tuesday, October 8, 2002, 2 p.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public—Pursuant to 5 U.S.C. 552b(f)(1) and 16 CFR 1013.4(b)(3)(7)(9) and (10) and submitted to the **Federal Register** pursuant to 5 U.S.C. 552b(e)(3).

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: September 25, 2002.

Todd A. Stevenson,

Secretary.

[FR Doc. 02–24814 Filed 9–25–02; 3:49 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with section 350(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 26, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Force Management Policy/Military Personnel Policy—Armed Forces Chaplains Board,) ATTN: Chaplain (COL) Horton, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 697–9015.

Title, Associated Form, and OMB Control Number: Appointment of Chaplains for the Military Services; DD Form 2088 and DD Form 2741; OMB Control Number 0704–0190.

Needs and Uses: Per 32 CFR part 65, in conjunction with 10 U.S.C. 532 and 591, professionally qualified clergy persons shall be appointed as chaplains to provide for the free exercise of religion for all members of the military services, their dependents, and other authorized persons. Since World War I, the professional qualifications of clergy have been certified by the faith group of which these clergy are members. Religious organizations register with the Department of Defense for the purpose of endorsing clergy as fully qualified to serve as chaplains in the armed forces. No clergy person may become a chaplain without this endorsement, and the loss of this endorsement constitutes a loss of professional status. It also certifies the number of years of professional experience for each candidate.

Department of Defense Directive 1304.19, ''*Appointment of Chaplains for the Military Services,*'' requires that religious faith groups be officially registered by the Department of Defense in order to endorse chaplains to the Military Services. This information collection is needed to ensure that religious faith groups are appropriately organized and authorized by their constituencies to endorse clergy for service as chaplains in the Military Services.

The information in DD Form 2741, ''*Ecclesiastical Endorsing Organization Verification/Reverification,*'' is collected whenever a religious faith group initially seeks registration with the Department of Defense as an

ecclesiastical endorsing agency; it is reverified every 3 years thereafter. The form is sent by the religious faith group to the Armed Forces Chaplains Board (AFCB). DD Form 2741, ''*Ecclesiastical Endorsing Organization Verification/ Reverification,*'' has been used to verify the continued eligibility of the religious organizations identified as ecclesiastical endorsing agencies. One-third of the organizations have been verified or reverified over the past year using this form.

The DD Form 2088, ''*Certificate of Ecclesiastical Endorsement,*'' is used whenever an ecclesiastical endorsing agency submits a clergy person as a candidate to become a chaplain. The ecclesiastical endorsing agency sends it to the Military Service which the clergy person wishes to join.

The three Military Services are required by DoD Directive 1304.19, ''*Appointment of Chaplains for the Military Services,*'' to obtain a certification of the professional qualifications of clergy applying for the chaplaincy DD Form 2088, ''*Certificate of Ecclesiastical Endorsement,*'' also requests the name, address, number of years of professional experience accrued by the clergy person, and number of years of previous military experience. This information is used in computing constructive credit for determining grade, date of rank, and eligibility of promotion of appointees in the chaplaincies.

Affected Public: Not-For-Profit Institutions.

Annual Burden Hours: 616 hrs.

Number of Respondents: 797.

Responses per Respondent: 1.

Average Burden per Response: .77.

Frequency: On occasion/annually.

Summary of Information Collection

The information in DD Form 2741, ''*Ecclesiastical Endorsing Organization Verification/Reverification,*'' is collected whenever a religious faith group initially seeks registration by the Department of Defense as an ecclesiastical endorsing agency; it is reverified every 3 years thereafter. The form is sent by the religious faith group to the Armed Forces Chaplains Board (AFCB). The DD Form 2088, ''*Certificate of Ecclesiastical Endorsement,*'' is used on occasion, whenever an ecclesiastical endorsing agency submits a clergy person as a candidate to become a chaplain. The ecclesiastical endorsing agency sends it to the Military Service which the clergy person wishes to join.

The three Military Services are required by DoD Directive 1304.19, ''*Appointment of Chaplains for the Military Services,*'' to obtain a certification of the professional qualifications of clergy applying for the chaplaincy. This certification is rendered in the form of an ecclesiastical endorsement from the clergy person's religious faith group. An ecclesiastical endorsement is an essential part of the application process for clergy to become chaplains. DD Form 2088, ''*Certification of Ecclesiastical Endorsement,*'' also requests the number of years of professional experience accrued by the clergy person. This information is used in computing constructive credit for determining grade, date of rank, and eligibility of promotion of appointees in the chaplaincies. Both the military and the religious faith groups insist on ensuring that only professionally qualified clergy serve as chaplains. Without this formal process, the chaplaincy would cease to exist as a professional corps.

DD Form 2741, ''*Ecclesiastical Endorsing Organization Verification/ Reverification,*'' is used by religious faith groups seeking DoD registration as ecclesiastical endorsing organizations for supplying chaplains to the Military Services. Each religious faith group is required to certify that it is authorized by its memberships to act as the sole agency for the purpose of certifying and endorsing clergy to serve as military chaplains. After initial certification, these organizations are required to reverify this information every 3 years. This information collection is used by the AFCB to determine whether a religious faith group has met the requirements to become (or remain) an ecclesiastical endorsing agency, able to endorse clergy for service as chaplains. The AFCB regularly supplies the military Chaplain Services with a list of registered ecclesiastical endorsing agencies. The list is used in the chaplain recruitment/accession process to validate that candidates for the chaplaincy are endorsed by a group registered by the Department of Defense.

DD Form 2088, ''*Certificate of Ecclesiastical Endorsement,*'' is used to certify that a member of the clergy is professionally qualified to become a chaplain. It requests information about name, address, professional experience, and previous military experience to be used in determining grade, date of rank, and eligibility for promotion for appointees to the chaplaincies of the armed forces. DD Form 2741, ''*Ecclesiastical Endorsing Organization Verification/Reverification,*'' is used to request basic demographic information about religious organizations seeking to supply clergy persons to the Military Services to serve as chaplains. It requests the name of an official authorized to represent the organization to the Military Services, and it requires the organization to certify that it is authorized by its membership to act as the sole agency for the purpose of certifying and endorsing clergy to serve as military chaplains.

The information collected from DD Form 2088, ''*Certificate of Ecclesiastical Endorsement*,'' has been used over the past several years by the three Military Services to ensure that those clergy who applied to become chaplains were professionally qualified and appropriately endorsed by their respective religious faith groups. DD Form 2741, ''*Ecclesiastical Endorsing Organization Vertification/ Reverification,*'' has been used to verify the continued eligibility of the religious organizations identified as ecclesiastical endorsing agencies.

Dated: September 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–24543 Filed 9–26–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction. Notice of this meeting is required under the Federal Advisory Committee Act. (Public Law 92–463).

DATES: September 30, 2002.

ADDRESSES: The Pentagon, Washington, DC 20301, Room 2E223

FOR FURTHER INFORMATION CONTACT: RAND provides information about this Panel on its Web site at *http://www.rand.org/organization/nsrd/terrpanel;* it can also be reached at (703) 413–1100 extension 5321.

SUPPLEMENTARY INFORMATION:

Proposed Schedule and Agenda

Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction will meet from 8:30 a.m. until 4 p.m. on September 30, 2002. Time will be

allocated for public comments by individuals or organizations at the end of the meeting. Public comment presentations will be limited to two minutes each and must be provided in writing prior to the meeting. Mail written presentations and requests to register to attend the open public session to: Nancy Rizor, RAND, 1200 South Hayes Street, Arlington, VA 22202–5050. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: September 20, 2002.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–24540 Filed 9–26–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session at the Pentagon on October 10 from 1700–1930 and October 11, 2002, from 0900 to 1800.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B(c)(1)(1982), and that accordingly this meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Contact Ann Hansen, 703–693–7034.

Dated: September 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–24542 Filed 9–26–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Enduring Freedom Lessons Learned will meet in closed session on November 21–22, 2002, in the Pentagon, Washington, DC. This Task Force will review current activities of Operation Enduring Freedom to determine both near and longer-term technical and operational considerations that could be used to improve this operation and future campaigns initiated in the War Against Terrorism.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review and evaluate operational policy and procedures, command control, intelligence, combat support activities, weapon performance, and science technology requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act. Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, this meeting will be closed to the public.

Dated: September 23, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–24541 Filed 9–26–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 26, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to U.S. Army ROTC Cadet Command, ATTN: ATCC–01 (Elaine Krzanowski), 55 Patch Road, Building 56, Fort Monroe, VA 23651–1052. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 692–1451.

Title: U.S. Army ROTC 4-Year College Scholarship Application (For High School Students) CC Form 114–R, OMB Control Number 0702–0073.

Needs and Uses: The Army ROTC Program produces approximately 80 percent of the newly commissioned officers for the U.S. Army. The Army ROTC scholarship is an incentive to attract men and women to pursue educational degrees in the academic disciplines required by the Army. The information is collected annually.

Affected Public: Individuals or Households.

Annual Burden Hours: 15,760.

Number of Respondents: 11,000.

Responses Per Respondent: 1.

Average Burden Per Response: 45 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION: The applications are available to high school students. Once the applications for U.S. Army ROTC 4-Year College Scholarship Program are completed, they are submitted to Headquarters, Cadet Command for review, screening and selection of scholarship recipients. The

application and information provide the basis for the scholarship award.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–24534 Filed 9–26–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Preparation of an Environmental Impact Statement (EIS) at Fort Lewis and Yakima Training Center, Washington

AGENCY: Department of the Army, DoD.

ACTION: Notice of Intent.

SUMMARY: The Department of the Army is updating the environmental strategic planning process for Fort Lewis and the Yakima Training Center (YTC), Washington. While this planning process encompasses a series of individual land management documents (some for each installation and some for both), the fundamental focus of this effort will be on the long-term sustainability of both Fort Lewis and the YTC. The Army will prepare a comprehensive EIS in accordance with the National Environmental Policy Act (NEPA) on proposed revisions to the strategic planning process; and the Army will use public input to ensure that the needs of the installation and the surrounding communities are reflected in the final strategic plans. This sustainability planning will focus on the development of operational procedures that support the Army mission in the present without compromising the ability to accomplish the mission in the future and without limiting local communities' abilities to have a productive future. Deliberate, early planning, adaptability to changing conditions, and thorough coordination with regional stakeholders is essential to address the magnitude and complexity of the challenges inherent in the Army's transformation process. The EIS will evaluate the potential impacts of alternative Fort Lewis and the YTC operations, and appropriate revisions will be made in the installation strategic planning processes.

ADDRESSES: Questions regarding this proposal or written comments should be forwarded to: Public Works, AFZH–PWE MS 17 (Mr. Palul T. Steucke, Jr.), Box 339500. Fort Lewis, WA 98433–9500.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Van Hoesen, Fort Lewis NEPA Coordinator at (253) 966–1780.

SUPPLEMENTARY INFORMATION: The Department of the Army has decided to modernize its forces through a process known as Army Transformation. As an interim step, the Army will establish a force that will use new weapons and employ new doctrines by transforming existing brigades at a number of installations. Fort Lewis has been chosen as one of those installations, and therefore, proposes to develop and adopt an environmental planning process that will ensure that Fort Lewis' land and natural resources can be sustained into the foreseeable future. Fort Lewis and the YTC are essential to the national security mission of the U.S Army Forces Command and the Special Operations Command, providing approximately 86,000 acres and 323,000 acres, respectively, for training areas and ranges. The combined assets of these two installations procedure combat units trained and ready for deployment. The Army has begun the transformation process. Emerging security challenges of the 21st century require that the Army transform. Among these challenges is the need to balance risk by sustaining the Army's readiness to meet the Nation's present warfighting requirements, field and station interim forces to fill current capability gaps, and design and field a force to meet future requirements. Army transformation is a continuous process, which is nested as part of the overall DoD transformation efforts. As part of these efforts, the Army is designing the Objective Force, a force that possesses the characteristic of being responsive, deployable, agile, versatile, lethal, survivable, and sustainable. A supporting effort in the Army's Transformation Campaign is the near-term effort to field and station six Stryker Brigade Combat teams (SBCTs), a force that is forming the development of the Objective Force. SBCTs are designed as a land component part of a joint team. It is designed to enter early in a theater to deter out potential adversaries. If that deterrence fails, it is a force that is more lethal and survivable than the Army's current light infantry forces, and as a member of that deployed joint or coalition force will contribute to swiftly defeat that adversary. With transformation, the army is developing new vehicles, weapons systems and numerous other technologies, which will result in qualitative and quantitative changes in the impact on/to the environment. Currently, as the details of this new force are framed, much is unknown about future actions and resulting environmental impacts. To address such uncertainties, a more sustainable approach to environmental management is envisioned, one that can adapt to these changes by: (1) Identifying issues early in the decision process, (2) providing for a responsive feedback mechanism to decision makers and stakeholder, (3) determining the carrying capacity of the land, and (4) ensuring continuous community and stakeholder involvement. This shift in focus toward sustainability must be integrated into all business processes and management systems. This EIS will assess and evaluate the environmental consequences of alternative management strategies which promote the long-term sustainment of the training mission; natural, cultural, and environmental resources; and the surrounding community and region.

The EIS will evaluate a range of reasonable management alternatives and their subsequent environmental effects, define the sustainability issues that should frame decision making, and provide a clear comparison among the management options. While short-range management options will likely support existing planning processes or documents, these analyses will likely affect long-range sustainability goals, objectives, and management systems. The results of these analyses will be incorporated into revised management documents and installation policies. During the scoping process, the public is asked to define significant sustainability issues and a range of alternative approaches to deal with those issues and establish long-term installation sustainability.

Potential significant issues, in addition to those defined by the public, will include air quality, water quality, cultural resources, sensitive species and habitats, soil erosion, and noise.

Scoping Process: Comments received through this notice will assist the Army in framing alternative courses of action at Fort Lewis and the YTC, identifying potential impacts on the quality of the human and natural environment, and selecting long-range sustainable management of these installations. Individuals and organizations are invited to participate in scoping meetings to be held in the vicinity of Fort Lewis and the Yakima Training Center in the fall of 2002. Notification of actual times and locations will be announced in local newspapers and other media. These meetings will provide the opportunity for the public to participate in the EIS and assist the Army in establishing the scope of the study. The following issues have already been identified for inclusion in the EIS: (1) Managing, with the goal of maintaining healthy species, many that

vary in life histories, habitat needs, and response to training and other land uses; (2) Unknown effects of new equipment and training patterns and intensities on environmental resources; (3) Setting allowable training levels when only limited biological information is available on many resources; (4) Insufficient information on threshold levels and the relationship to management measures; (5) The need to coordinate management of many species and habitats with the state; (6) Regulations that are becoming increasingly complex, costly and difficult to understand.

If individuals or organizations are unable to attend the scheduled scoping meetings, they may participate by sending written questions and comments to the address above no later than 30 days following the public scoping meetings. A mailing list has been prepared for public scoping and review throughout the EIS process. This list includes local, state, and Federal agencies with jurisdictions or other interests in the project. In addition, the mailing list includes all adjacent property owners, affected municipalities and other interested parties such as conservation organizations. Anyone wishing to be on the mailing list can contact the person identified above.

Dated: September 20, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc. 02–24573 Filed 9–26–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Enzyme-Catalyzed Modifications of Macromolecules in Organic Solvents

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37b CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,448,050 B1 entitled ''Enzyme-Catalyzed Modification of Macromolecules in Organic Solvents'' issued September 10, 2002. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or E-mail: Robert.Rosenkrans@natick.army.mil.

SUPPLEMENTARY INFORMATION: Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–24532 Filed 9–26–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patent and U.S. Patent Applications for Non-Exclusive, Exclusive, or Partially Exclusive Licensing for Hand-Held Temperature Programmable Modular Gas Chromatograph, Biological Classification System, and Injection Valves

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with 35 U.S.C. 209 and 37 CFR part 404 announcement is made of the availability for licensing of the U.S. Patent Applications and U.S. Patent for non-exclusive, exclusive, or partially exclusive licensing listed in under **SUPPLEMENTARY INFORMATION**. The inventions listed have been assigned to the United States Government as represented by the Secretary of the Army, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. John Biffoni, Intellectual Property Attorney, U.S. Army Soldier and Biological Chemical Command, ATTN: AMSSB–CC (Bldg. E4435), Aberdeen Proving Ground, MD 21010–5424, Phone: (410) 436–1158; FAX: 410–436–2534 or E-mail: *John.Biffoni@sbccom.apgea.army.mil*.

SUPPLEMENTARY INFORMATION:

1. *Title:* ''Hand-Held Temperature Programmable Modular Gas Chromatograph.''

Description: The present invention relates to a gas chromatograph system of reduced size, weight and low power consumption for hand-held field applications. More particularly, to a modular gas chromatography system, which is capable of being interfaced with other portable analyzers.

Patent Number: 5,856,616.

Issue Date: January 5, 1999.

2. *Title:* ''Biological Classification System.''

Description: The present invention relates to a hand-held chemical vapor detector for detecting biological substances in an indoor and outdoor setting. More specifically, the invention relates to a plasma chromatograph (PC) vapor detector that is interfaced to a biological sample processing and transfer introduction system.

Patent Application Number: 10/205,356.

Filed: 07/25/2002.

3. *Title:* ''Injection Valves.''

Description: The present invention relates generally to the field of valves and, in particular, to an alternative method for injecting sample fluids into chromatography columns.

Patent Application Number: Not yet assigned.

Filed: 09/11/02.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–24531 Filed 9–26–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Delete and Amend Systems of Records.

SUMMARY: The Department of the Army is deleting and amending systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on October 28, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Freedom of Information/Privacy Act Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–FOIA/PA, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Mrs. Rose Marie Christensen at (703) 806–5698 or DSN 656–5698 or Ms. Janice Thornton at (703) 806–7138 or DSN 656–7138.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The

proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 19, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

A0210–7b TAPC

SYSTEM NAME:

Commercial Solicitation Ban Lists (May 11, 1998, 63 FR 25840).

REASON:

Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not ''individuals'' subject to the Privacy Act. Therefore, this system of records is being deleted from the Department of the Army's inventory of Privacy Act systems of records notices.

Amendments

The Preamble to the Department of the Army's Compilation of Privacy Act systems of records notices is being amended by replacing paragraphs three and four with the following:

FOR FURTHER ASSISTANCE:

Any questions should be addressed to the Freedom of Information/Privacy Act Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–FOIA/PA, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

POINTS OF CONTACT:

Mrs. Rose Marie Christensen at (703) 806–5698 or DSN 656–5698 or Ms. Janice Thornton at (703) 806–7138 or DSN 656–7138.

* * * * *

A0690–990–2 ASA(M&RA)

SYSTEM NAME:

Voluntary Leave Transfer Program Records (July 13, 2000, 65 FR 43300).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''A0690–990–2 SAMR''.

* * * * *

A0690–990–2 SAMR

SYSTEM NAME:

Voluntary Leave Transfer Program Records.

SYSTEM LOCATION:

Records on current Federal employees are maintained by the local Civilian Personnel Advisory Centers at each installation. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have volunteered to participate in the voluntary leave transfer program as either a donor or a recipient.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave recipient records contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, pay level, leave balances, number of hours requested, brief description of the medical or personal hardship which qualifies the individual for inclusion in the program, and the status of that hardship.

The file may also contain medical or physician certifications and agency approvals or denials.

Donor records include the individual's name, organization, office telephone number, Social Security Number, position title, grade, and pay level, leave balances, number of hours donated and the name of the designated recipient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6331 *et seq.,* Leave; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 690–990–2, Hours of Duty, Pay and Leave Annotated; 5 CFR part 630; and E.O. 9397 (SSN).

PURPOSE(S):

The file is used in managing the Army's Voluntary Leave Transfer Program. The recipient's name, position data, organization, and a brief hardship description are published internally for passive solicitation purposes. The Social Security Number is sought to effectuate the transfer of leave from the donor's account to the recipient's account.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness

Where leave donor and leave recipient are employed by different Federal agencies, to the personnel and pay offices of the Federal agency involved to effectuate the leave transfer.

The DoD ''Blanket Routine Uses'' set forth at the beginning of Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper in file folders and electronic media storage.

RETRIEVABILITY:

By surname or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the records or by persons responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms and are controlled by personnel screening and computer software.

RETENTION AND DISPOSAL:

Disposition pending (until NARA disposition is approved, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Director of Civilian Personnel, Assistant Secretary of the Army, Manpower and Reserve Affairs Policy and Program Development, 200 Stovall Street, Alexandria, VA 22332–0300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Secretary of the Army, Manpower and Reserve Affairs Policy and Program Development, 200 Stovall Street, Alexandria, VA 22332–0300.

For verification purposes, the individual should provide full name, current address, and Social Security Number and the request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Secretary of the Army, Manpower and Reserve Affairs Policy and Program Development, 200 Stovall Street, Alexandria, VA 22332–0300.

For verification purposes, the individual should provide full name, current address, and Social Security Number and the request must be signed.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided primarily by the record subject; however, some data may be obtained from personnel and leave records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–24396 Filed 9–26–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Florida Bay/Florida Keys Integrated Feasibility Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Jacksonville District, intends to prepare a Draft Environmental Impact Statement (DEIS) for Florida Bay/Florida Keys Integrated Feasibility Study. The study is a cooperative effort between the Corps and the South Florida Water Management District (SFWMD), which is a cooperating agency for this DEIS. One of the recommendations of the final report of the Central & South Florida (C&SF) Comprehensive Review Study (Restudy) was the implementation of the Florida Bay/Florida Keys Integrated Feasibility Study. This study is intended to develop a comprehensive watershed plan, which identifies structural and/or operational modifications upstream of Florida Bay and to improve water quality in Florida Bay and Florida Keys. This study is a component of the Comprehensive Everglades Restoration Plan (CERP), a multi-year effort to restore the greater Everglades ecosystem while providing water supply and other water-related benefits to South Florida over many decades.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Tarr, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL, 32232–0019, by email *bradley.a.tarr@usace.army.mil,* or by telephone at 904–232–3592.

SUPPLEMENTARY INFORMATION:

a. *Authorization:* The authority for this project is contained in Section 601(c)(x) of the Water Resources Development Act (WRDA) 2000. The ''Design Agreement between the Department of the Army and the SFWMD for the Design of Elements of the Comprehensive Plan for the Everglades and South Florida Ecosystem Restoration Project'' contains additional guidance.

b. *Study Area:* Florida Bay and the Florida Keys are located in southern Dade and Monroe Counties. These areas are the receiving bodies of water released from the everglades through both Shark River and Taylor sloughs. The Study area extends from the western edge of Florida Bay out beyond the reef tract and south to Key West. The Northern Limits are wetlands above the coastal lakes on the northern edge of Florida Bay.

c. *Project Scope:* The Restudy recommended conducting a feasibility study to comprehensively examine the Florida Bay and Florida Keys marine habitats and environmental conditions, along with the actions and land uses upstream, to determine the modifications necessary to successfully restore water quality and ecological conditions to the region.

The study will evaluate alternatives based on their ability to improve water deliveries to the natural system, protect and conserve water resources, improve water quality, protect or restore fish and wildlife and their associated habitat, restore and manage wetland and associated upland ecosystems, sustain economic and natural resources, and other performance criteria being developed by the Project Delivery Team.

d. *Preliminary Alternatives:* Additional alternatives will be drafted which may be revised pending model results and public feedback. These alternatives will provide operational targets to upstream modifications, as well as, potential structural changes and wetland or flow restoration.

The Environmental Impact Statement (EIS) will include an evaluation of adverse environmental impacts, including but not limited to, water quality, socio-economic, archeological and biological. In addition to adverse impacts, the evaluation will also focus on how well the plans perform with regard to specific performance measures.

e. *Issues:* The EIS will address the impacts concerning freshwater flow into Florida Bay from both Shark River and Taylor sloughs; and water quality, particularly in the receiving waters of Florida Bay and the reef tract.

The EIS will also address other environmental issues including: Impacts to the estuaries; flood protection; aesthetics and recreation; fish and wildlife resources, including protected species; cultural resources; and other impacts identified through scoping, public involvement, and interagency coordination.

f. *Scoping:* A scoping letter and public workshops will be used to invite comments on alternatives and issues from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals. The next public workshops are scheduled for October 8, 2002, at the Marathon Government Center, on 2798 Overseas Highway, Marathon, Florida; and on October 9, 2002 at the Key Largo Civil Club, on 209 Ocean Bay Drive, Key Largo, Florida. The meetings will begin at 7 p.m. and continue to 9 p.m.

Other public meetings will be held over the course of the study; the exact location, dates, and times will be announced in public notices and local newspapers.

g. *DEIS Preparation:* The DEIS is currently scheduled for publication in January 2005.

Dated: September 10, 2002.

James C. Duck,

Chief, Planning Division.

[FR Doc. 02–24533 Filed 9–26–02; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

The following inventions are available for licensing:

U.S. Patent Application Serial No.(s) 10/209,268; 10/209,265; 10/209,266; and 10/209,267, entitled ''A Nofoam System for testing a foam delivery system on a vehicle''. Navy Case No.(s) 83,826; 84,013; 84,014; and 84,015.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Naval Research Laboratory, Code 3008.2, 4555 Overlook Ave, SW., Washington, DC 20375–5320

and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Dr. Richard H. Rein, Head, Technology Transfer Office, NRL, Code 1004, 4555 Overlook Ave, SW., Washington, DC 20375–5320, telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: September 18, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–24583 Filed 9–26–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of Marine Corps University

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice as is necessary to facilitate high educational standards and cost effective operations. The Board will be meeting the new President, MCU, and reviewing the fiscal plan for next year, the University's Institutional Research program, the status of the School of Strategic Warfighting's pursuit of degree granting authority, and reviewing the University's curriculum mapping initiative. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Monday, October 28, 2002, from 8 a.m. to 4 p.m. and on Tuesday, October 29, 2002, from 8 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Marine Corps University General Alfred M. Gray Research Center, Rooms 164–166, 2040 Broadway Street, Quantico, VA 22134.

FOR FURTHER INFORMATION CONTACT: Dr. Jerre Wilson, Executive Secretary, Marine Corps University Board of Visitors, 2076 South Street, Quantico, VA 22134, telephone number (703) 784–6917.

Dated: September 18, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–24582 Filed 9–26–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Jen-Jr. ''Vincent'' Gau

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of it's intent to grant to Jen-Jr. ''Vincent'' Gau, a revocable, nonassignable, exclusive license in the United States to practice the Government-owned invention described in U.S. Patent Application No. 09/848,727 entitled ''A Biological Identification System with Integrated Sensor Chip''.

DATES: Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Patent Counsel, Space and Naval Warfare Systems Center, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Ward, Space and Naval Warfare Systems Center, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765, telephone (619) 553–3823.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: September 18, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–24581 Filed 9–26–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; JR Thomas International, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to JR Thomas International, Inc., a revocable, nonassignable, exclusive license to practice in the United States, the Government-owned invention described in U.S. Patent Application Serial No.(s) 10/209,265; 10/209,266; 10/209,267; 10/209,268, entitled ''A Nofoam System for testing a foam delivery system on a vehicle'', filed July 30, 2002, Navy Case No.(s) 83,826; 84,013; 84,014; and 84,015.

DATES: Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy St., Arlington, VA 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. A. David Spevack, Supervisory Associate Counsel, Intellectual Property, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy St., Arlington, VA 22217–5660, telephone (703) 696–4007, E–Mail: *spevacd@onr.navy.mil* or fax (703) 696–6909.

(**Authority:** 35 U.S.C. 207, 37 CFR part 404.)

Dated: September 18, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–24584 Filed 9–26–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Wednesday, October 9, 2002, 6 p.m.–9:30 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–

90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board:

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Review Draft Recommendations
- Reports from the Environmental Restoration, Stewardship, and Waste Management Committees
- Discuss 2nd Reading of Proposed By-law Change
- Review ESD (Explanation of Significant Difference) Fact Sheet
- Public Comment Period

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on September 23, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–24597 Filed 9–26–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah, KY

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, October 15, 2002, 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.
Informal Discussion
6 p.m.
Call to Order; Introductions; Approve September Minutes; Review Agenda
6:10 p.m.
DDFO's Comments
- Budget Update
- ES & H Issues
- EM Project Updates
- CAB Recommendation Status
- Other

6:30 p.m.
Ex-officio Comments
6:40 p.m.
Public Comments and Questions
6:50 p.m.
Review of Action Items
7:05 p.m.
Break
7:15 p.m.
Presentation
- Water Policy Box

7:45 p.m.
Public Comments and Questions
7:55 p.m.
Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

8:25 p.m.
Administrative Issues
- October Chair's Meeting
- Review of Workplan
- Review of Next Agenda
- Federal Coordinator Comments
- Final Comments

9 p.m.
Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed above or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC on September 23, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–24598 Filed 9–26–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs Meeting

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs Meeting. The Federal Advisory Committee Act (Pub.

L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: October 17–19, 2002.

ADDRESSES: Marriott Hotel, 500 Hill Avenue, Knoxville, TN Phone: 1–800–932–2198.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, PO Box 2001, EM–922, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Friday, October 18, 2002

8–8:30 a.m. Registration
8:30–9 a.m. Welcome by Dave Mosby, OR SSAB Chair; Welcome by Gerald Boyd, OR DOE AMEM; Introductions; Meeting Guidelines; Agenda Review; Expectations of Participants
9 a.m. Comments from Ms. Jessie Roberson, EM–1, DOE–HQ
9:15 a.m. Facilitated discussion, SSAB members and Ms. Roberson
10 a.m. Break
10:15 a.m. SSAB issues roundtable presentations (5 minutes per site)
11 a.m. SSAB issues roundtable facilitated discussion
11:30 a.m. Presentation by Brian Quirke, DOE Chicago, Public Affairs, on Communicating More Effectively With the Public
Noon Lunch
1 p.m. Meeting assessment and questions from the morning
1:10 p.m. Presentation by Paul Golan, DOE HQ, on ACP, PMP
1:40 p.m. Facilitated discussion SSAB members and Mr. Golan
2:45 p.m. Break
3 p.m. SSAB issues roundtable facilitated discussion continued
3:45 p.m. Presentation by Mr. Blaine Rowley, DOE–HQ–DOE Response to the Groundwater Workshop Letter
4 p.m. Facilitated discussion, SSAB members and Mr. Rowley
4:45 p.m. Wrap up and critique of the day; Agenda for next day

Saturday, October 19, 2002

8–8:30 a.m. Registration
8:30–8:45 a.m. Welcome; Tie up loose ends; Review; Agenda
8:45 a.m. Presentation by Jim Brannon, NNM SSAB Chair—Tru Waste and Transportation Workshop at the WIPP
9:15 a.m. Chairs Discussion—Future Workshops and Chairs Meetings
9:45 a.m. Break
10 a.m. SSAB issues roundtable facilitated discussion continues
11:30 p.m. Public comment period
Noon Wrap up and review action items, outstanding issues; Critique meeting

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing or calling Pat Halsey at the address or telephone number listed above.

Issued at Washington, DC on September 23, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–24600 Filed 9–26–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000.

The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee

DATES: October 17 & 18, 2002.

TIME: 8:30 a.m.

ADDRESSES: Hilton Crystal City Hotel at National Airport, Chesapeake Room 2399 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Douglas E. Kaempf, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–7766.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased industrial products.

Tentative Agenda: Agenda will include discussions on the following:

- Full committee discussion on the development of a Vision and a Roadmap document for federal biomass research and development programs.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact Douglas E. Kaempf at 202–586–7766 or *Bioenergy@ee.doe.gov* (email). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 23, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–24599 Filed 9–26–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–548–000]

Colorado Interstate Gas Company; Notice of proposed Changes in FERC Gas Tariff

September 20, 2002.

Take notice that on September 16, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective October 17, 2002:

Fifth Revised Sheet No. 382
Eighth Revised Sheet No. 383
Third Revised Sheet No. 383A
Fourth Revised Sheet No. 384
Second Revised Sheet No. 384A
Fifth Revised Sheet No. 406A
Fourth Revised Sheet No. 408
Fifth Revised Sheet No. 412A
Fourth Revised Sheet No. 414
Fifth Revised Sheet No. 419
Third Revised Sheet No. 421
Second Revised Sheet No. 422

CIG states that these tariff sheets revise the Form of Service Agreements applicable to service under CIG's firm and no-notice rate schedules to include additional contracting practices.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–24566 Filed 9–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–43–000]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

September 20, 2002.

Take notice that on September 16, 2002, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheet listed below to become effective October 16, 2002. Dauphin Island states that this tariff sheet is being filed to correct an administrative error.

First Revised Sheet No. 127

Dauphin Island states that a copies of this filing are being served contemporaneously on its customers and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–24562 Filed 9–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–067]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

September 20, 2002.

Take notice that on September 16, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective October 1, 2002.

Natural states that the purpose of this filing is to implement an amendment to an existing negotiated rate transaction entered into by Natural and Aquila Merchant Services, Inc. under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff. Natural states that the amended negotiated rate agreement does not deviate in any material respect from the applicable form of service agreement in Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The

Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–24565 Filed 9–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–550–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

September 20, 2002.

Take notice that on September 18, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets attached in Appendix A to the filing, to be made effective on November 1, 2002.

Tennessee states that the purpose of this filing is to set forth in certain of its *pro forma* tariff service agreements an additional type of permissible discount that would allow Tennessee and its customers to agree to specific discounts based on a production or reserve commitment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–24567 Filed 9–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–549–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

September 20, 2002.

Take notice that on September 17, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 247B, to be effective October 17, 2002.

TransColorado's filing corrects the delivery-point reference under Section 12.9(d)(i) of its FERC Gas tariff from ''Love Ranch'' to ''[a]t the terminus of TransColorado's line at Greasewood.'' The reference to Love Ranch was inadvertently included in TransColorado's July 30, 2002, filing in Docket No. RP02–398–000, which was approved by letter order dated August 30, 2002.

TransColorado states that a copy of this filing is being served upon TransColorado's customers, the Colorado Public Utilities Commission and New Mexico Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–24568 Filed 9–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–111–000, et al.]

Concord Electric Company, et al.; Electric Rate and Corporate Regulation Filings

September 19, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Concord Electric Company, Exeter & Hampton Electric Company, Unitil Energy Systems, Inc.

[Docket No. EC02–111–000]

Take notice that on August 30, 2002, Concord Electric Company, Exeter & Hampton Electric Company, and Unitil Energy Systems, Inc., filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act and 18 CFR part 33 for authorization of an intra-corporate reorganization. The proposed Reorganization involves the merger of Exeter & Hampton Electric Company into Concord Electric Company to form a single distribution company, which will be renamed Unitil Energy Systems, Inc.

Comment Date: October 4, 2002.

2. Choctaw Generation Limited Partnership

[Docket No. EC02–116–000]

Take notice that on September 10, 2002, Choctaw Generation Limited Partnership (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization to transfer certain jurisdictional facilities to one or more special purpose limited liability companies for the purposes of a sale-leaseback financing involving the Red Hills Generating Facility (Facility), a 440 MW (net) facility located in Choctaw County, Mississippi. Applicant

also requests that the Commission disclaim jurisdiction under the FPA with respect to the passive owner/lessor that will assume ownership of the Facility for financing purposes only.

Comment Date: October 1, 2002.

3. SE Choctaw, L.L.C.

[Docket No. EG02–186–000]

Take notice that on September 13, 2002, SE Choctaw, L.L.C. (the Applicant), 270 Peachtree Street, NW., Atlanta, GA 30303, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Delaware limited liability company who states it is engaged directly, or indirectly through one or more affiliates as defined in section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

The Applicant also states it will engage in a sale-leaseback of a 440–MW lignite-fired electric generating plant located in Choctaw County, Mississippi (the ''Facility''), with Choctaw Generation Limited Partnership, an EWG formed to own and operate the Facility. The Applicant will be a passive investor without any control or decision-making authority over the Facility.

Comment Date: October 2, 2002.

4. Oswego Harbor Power LLC

[Docket No. ER99–3637–001]

Take notice that on September 16, 2002, Oswego Harbor Power LLC tendered for filing its triennial review in compliance with the Commission's order in Oswego Harbor Power, LLC, Docket No. ER99–3637–000.

Comment Date: October 7, 2002.

5. ANP Bellingham Energy Company, LLC, ANP Blackstone Energy Company, LLC, ANP Funding I, LLC, ANP Marketing Company, Milford Power Limited Partnership

[Docket Nos. ER00–2117–001, ER00–2118–001, ER00–3751–001, ER00–1828–001, and ER93–493–014 (Not Consolidated)]

Take notice that on September 17, 2002, ANP Bellingham Energy Company, LLC, ANP Blackstone Energy Company, LLC, ANP Funding I, LLC, ANP Marketing Company and Milford Power Limited Partnership tendered for filing a triennial market power update in support of the continuation of their existing authority to sell power at market-based rates.

Comment Date: October 8, 2002

6. Appalachian Power Company

[Docket No. ER01–3122–002]

Take notice that on September 16, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing in compliance with the Letter Order issued in this Docket on May 6, 2002, as amended executed Interconnection and Operation Agreement between Appalachian Power Company and Duke Energy Wythe, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of November 26, 2001. A copy of the filing was served upon the Virginia State Corporation Commission.

Comment Date: October 7, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1420–005]

Take notice that on September 13, 2002, a letter was submitted on behalf of Southwestern Electric Power Company (SWEPCO) and Public Service Company of Oklahoma (PSO), operating companies of the American Electric Power System (collectively AEP) in response to the Commission's Order issued in the above-referenced proceeding on May 31, 2002, regarding the status of the Memorandum of Understanding (MOU) between AEP, Southwest Power Pool (SPP) and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).

Comment Date: October 1, 2002.

8. Southern California Edison Company

[Docket No. ER02–2107–002]

Take notice that on September 16, 2002, Southern California Edison Company (SCE) tendered for filing a compliance filing in the above-referenced docket involving its transmission service agreement with the M–S–R Public Power Agency.

SCE states that a copy has been served on the Service List in this proceeding.

Comment Date: October 7, 2002.

9. Southern California Edison Company

[Docket No. ER02–2119–002]

Take notice that on September 16, 2002, Southern California Edison Company (SCE) tendered for filing a revised rate sheet for FERC Electric Tariff, Substitute First Revised Original Volume No. 6, Service Agreement No. 10, the Interconnection Facilities Agreement (IFA) between SCE and Wildflower Energy LP (Wildflower). The purpose of this filing is to comply with the Commission's Order Conditionally Accepting Tariff Sheet for Filing, as Modified, and Establishing Hearing and Settlement Judge Procedures dated August 16, 2002 (Southern California Edison Company, 100 FERC ¶61,193).

Copies of this filing were served upon the Service List compiled by the Secretary in this docket.

Comment Date: October 7, 2002.

10. Cross-Sound Cable Company, LLC

[Docket No. ER02–2124–001]

Take notice that on September 16, 2002, Cross-Sound Cable Company, LLC (CSC LLC) tendered for filing a filing conforming the executed Interconnection Agreement between CSC LLC and the Long Island Power Authority to the requirements of Order No. 614. CSC LLC requests an effective date of July 1, 2002.

Comment Date: October 7, 2002.

11. Maine Electric Power Company

[Docket No. ER02–2128–001]

Take notice that on September 16, 2002 , Maine Electric Power Company (MEPCO) tendered for filing a Support Services Agreement for support services provided by MEPCO to CMP, and designated as Original Rate Schedule FERC No. 200.

Comment Date: October 7, 2002.

12. Virginia Electric and Power Company

[Docket No. ER02–2537–001]

Take notice that on September 17, 2002, Virginia Electric and Power Company (the Dominion Virginia Power or Company), respectfully tendered for filing an amendment to its filing in this procedure.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, Washington Gas Energy Services, Old Mill Power Company, Dominion Retail, Inc., AES New Energy, Inc., and Old Dominion Electric Cooperative.

Comment Date: October 8, 2002.

13. Consumers Energy Company

[Docket No. ES02–36–002]

Take notice that on September 17, 2002, Consumers Energy Company submitted a request for waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2 for securities to be issued pursuant to authorization already granted.

Comment Date: October 3, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–24427 Filed 9–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6641–046–Kentucky]

City of Marion, Kentucky, Smithland Hydroelectric Partners; Notice of Availability of Environmental Assessment

September 20, 2002.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR part 380), Commission staff have reviewed an application for a non-capacity related license amendment at the Smithland Project (FERC No. 6641), and have prepared an Environmental Assessment (EA) on the application. The project is located on the Ohio River in Livingston County, Kentucky.

Specifically, the project licensees (City of Marion, Kentucky and Smithland Hydroelectric Partners) have requested Commission approval to amend the present license by changing the location of the transmission line. In the EA, Commission staff have analyzed the probable environmental effects of the proposed transmission line construction and have concluded that approval of the proposal, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in Public Reference Room 2–A of the Commission's offices at 888 First Street, NE., Washington, DC. The EA also may be viewed on the Commission's Internet website (*www.ferc.gov*) using the ''FERRIS'' link. Additional information about the project is available from the Commission's Office of External Affairs, at (202) 502–6088 or on the Commission's website using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at (202) 502–8222, TTY (202) 502–8659. The FERRIS link on the FERC's Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. 02–24563 Filed 9–26–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7384–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Pre-Award Compliance Review Report for All Applicants Requesting Federal Financial Assistance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Preaward Compliance Review Report—ICR Number 0275.08; Active ICR OMB Expiration Date 02/28/2003 and OMB Control Number 2090–0014 before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 26, 2002.

ADDRESSES: Interested Persons may obtain a copy of the ICR without charge by calling 202–564–7272 or by writing the U.S. Environmental Protection Agency, Office of Civil Rights (1201A), 1200 Pennsylvania Ave NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Yasmin Yorker, Title VI Team Leader, 202–564–7272, *Yorker.Yasmin@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which request federal financial assistance from the Environmental Protection Agency.

Title: Preaward Compliance Review Report for all Applicants Requesting Federal Financial Assistance (OMB Control No. 2090–0015; EPA ICR No. 0275.08 expiring 2/28/03)

Abstract: The information request and gathering is a part of the requirement of 40 CFR part 7, ''Nondiscrimination in Programs Receiving Federal Assistance from the Environmental Protection Agency,'' at 40 CFR 7.80. The Regulation implements statutes which prohibit discrimination on the bases of race, color, national origin, sex and handicap. This information is also required, in part, by the Department of Justice regulation, 28 CFR 42.406 and 28 CFR 42.407. The information is collected on a short form for grant and loan applicants as part of the application process. The EPA Director of Civil Rights manages the data collection through a regional component whom also carries out the data analysis and makes the recommendation on the respondent's ability to meet the requirements of the regulation, as well as the respondent's current compliance with the regulation. The information and analysis is of sufficient value for the Director to determine whether the appliance is in compliance with the regulation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. Give enough background information so someone could comment on points (i)–(iv) below.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Affected Entities: State, local, and tribal governments; universities, associations; and non-profit organizations.

Estimated Number of Respondents: 13,100.

Frequency of Response: 1 per 1 to 2 years.

Estimated Total Annual Hour Burden: 6,550 hours.

Estimated Total Annualized Cost Burden (non-labor costs): $0.

Dated: September 18, 2002.

Karen D. Higginbotham,

Acting Director, Office of Civil Rights.

[FR Doc. 02–24645 Filed 9–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7384–2]

Protection of Stratospheric Ozone: Notice of Revocation of Certification for Refrigerant Reclaimers, Under Section 608 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revocation.

SUMMARY: In accordance with 40 CFR 82.154, no person may sell or offer for sale for use as a refrigerant any class I or class II ozone-depleting substance consisting wholly or in part of used refrigerant unless the substance has been reclaimed by a certified reclaimer. All persons reclaiming used refrigerant for sale to a new owner are required to certify to the EPA Administrator in accordance with 40 CFR 82.164.

Through this action, EPA is announcing the revocation of refrigerant reclaimer certifications of Atlantic Refrigerants of Beaver, PA; C.F.C. Reclamation and Recycling Service, Inc. of Abilene, TX; CFC Technologies, Inc. of Chester, CT; Full Circle Refrigerant Reclaim Services of Fort Worth, TX; Purification Technologies, Inc. of Chester, CT; and Trane Systems and Sales of Charlotte, NC. This action means that these companies are no longer authorized to reclaim and sell used refrigerant in accordance with the regulations promulgated at 40 CFR part 82, subpart F.

On March 6, 2002 the U.S. Department of Justice announced that the certification holder for CFC Technologies, Inc. pled guilty to conspiring to smuggle ozone-depleting substances into the United States by means of false statements to U.S. Customs and EPA officials, as well as defrauding the Internal Revenue Service in its attempts to collect excise and income taxes on proceeds from the sale of contraband ozone-depleting substances. EPA finds these violations grounds to revoke CFC Technologies, Inc.'s reclaimer certification. CFC Technologies, Inc. was issued a letter of revocation on March 13, 2002 that included an explanation of the basis for EPA's decision.

On May 31, 2001, C.F.C. Reclamation and Recycling Service, Inc. (currently doing business as H&L Enterprise) notified EPA that the company was being dissolved and would no longer be in the business of reclaiming used refrigerant for sale to a new owner. On September 9, 2002, EPA notified C.F.C. Reclamation and Recycling Service, Inc. of the Agency's intent to revoke certification of the dissolved company. The correspondence also noted that EPA certification of reclaimers is not transferable, as noted in 40 CFR 82.164(f); therefore, any company assuming the ownership of C.F.C. Reclamation and Recycling Service, Inc. would be required to certify to EPA headquarters within 30 days of the change of ownership in order to sell used and reclaimed refrigerant to a new owner.

This action also acknowledges the voluntary withdrawal of previously certified reclaimers. Reclaimers requesting to be removed from the list of EPA-certified reclaimers include: Atlantic Refrigerants; Full Circle, Inc. and its previously certified subsidiaries; Purification Technologies, Inc.; and Trane Systems and Sales. On September 10, 2002, EPA notified these refrigerant reclaimers that the Agency had accepted their voluntary withdrawal, and that the Agency would officially revoke their reclaimer certification.

DATES: Atlantic Refrigerants of Beaver, PA; C.F.C. Reclamation and Recycling Service, Inc. of Abilene, TX; CFC Technologies, Inc. of Chester, CT; Full Circle Refrigerant Reclaim Services of Fort Worth, TX; Purification Technologies, Inc. of Chester, CT; and Trane Systems and Sales of Charlotte, NC had their EPA refrigerant reclaimer certifications revoked effective September 10, 2002.

FOR FURTHER INFORMATION CONTACT: Julius Banks; Stratospheric Program Implementation Branch, Global Programs Division, Office of Atmospheric Programs, Office of Air and Radiation; Mail Code: 6205J; 1200 Pennsylvania Ave., NW; Washington, DC 20460; (202) 564–9870; *banks.julius@epa.gov.* EPA publishes information concerning certified refrigerant reclaimers online at *http://www.epa.gov/ozone/title6/608/reclamation/reclist.html.* The Stratospheric Ozone Information Hotline can also be contacted for further information at (800) 296–1996.

Dated: September 13, 2002.

Brian McLean,

Director, Office Of Atmospheric Programs.

[FR Doc. 02–24646 Filed 9–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6633–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed September 16, 2002 through September 20, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020395, Draft EIS, NPS, MT, Glacier National Park—Going-to-Sun Road Rehabilitation Plan, To Protect and Preserve National Historic Landmark, Waterton-Glacier International Peace Park, The World First International Peace Park, A World Heritage Site, MT, Comment Period Ends: November 12, 2002, Contact: Mary Riddle (406) 888–7898.

EIS No. 020396, Draft EIS, NPS, AZ, UT, Glen Canyon National Area, Personal Watercraft Rule-Making, Implementation, Lake Powell, Coconino County, AZ and Garfield, Kane, San Juan and Wayne Counties, UT, Comment Period Ends: November 27, 2002, Contact: Kitty L. Roberts (928) 608–6272.

EIS No. 020397, Final EIS, FHW, FL, I–4 Corridor Improvements, Upgrading the Safety and Mobility of the existing I–4, from west of FL–528 (Bee Line Expressway) interchange in Orange County to east of FL–472 interchange in Volusia County, Funding, COE Section 10 and 404 Permits, NPDES Permit, Orange, Seminole, and Volusia Counties, FL, Wait Period Ends: October 28, 2002, Contact: Derek Fusco (850) 942–9650.

EIS No. 020398, Draft Supplement, FHW, UT, U.S. Highway 189, Utah Valley to Heber Valley, Widen and Realign 35km (22 miles) between the Junctions with Utah Route 52 and U.S. Highway 40, Provo Canyon, Utah and Wasatch County, UT, Comment Period Ends: November 12, 2002, Contact: William R. Gedris (801) 963–0182.

EIS No. 020399, Final EIS, COE, NJ, New Jersey Shore Protection Study, To Determine a Feasible Hurricane and Storm Damage Reduction Plan, between Manasquan Inlet to Barnegat Inlet, Boroughs of Point Pleasant Beach, Bay Head, Mantoloking Lavallette, Seaside Heights and Seaside Park, and Townships of Buck, Dover and Berkeley, NJ, Wait Period Ends: October 28, 2002, Contact: James Warren (202) 761–4526.

EIS No. 020400, Draft Supplement, AFS, ID, Salmon Wild and Scenic River Management Plan, To Implement Timeline Change From December 31, 2002 to December 31, 2005 and Provide Clarify Information on Economic Impacts to the Camps, Stub Creek, Arctic Creek, and Smith Gulch Creek, Salmon National Forest, Salmon County, ID, Comment Period Ends: November 12, 2002, Contact: Patricia Pearson (208) 756–5348.

EIS No. 020401, Final EIS, FRC, TN, NC, VA, Patriot Project, Construction and Operation of Mainline Expansion and Patriot Extension in order to Transport 510.000 dekatherms per day (dth/day) of Natural Gas, TN, VA and NC , Wait Period Ends: October 28, 2002, Contact: Magalie Roman Salas (202) 208–1371.

EIS No. 020402, Final EIS, NPS, TX, Fort Davis National Historic Site, General Management Plan, Implementation, Fort Davis, TX, Wait Period Ends: October 28, 2002, Contact: Jerry R. Yarbrough (915) 426–3224. This document is available on the Internet at: ''*http://planning.den.nps.gov/plans.cfm*''.

EIS No. 020403, Final EIS, FHW, LA, Bayou Barataria Bridge/LA–302 Replacement, LA–45/Jean Lafitte Boulevard to LA–3257/Privateer Boulvard, Funding and U.S. Army COE Section 404 and U.S. Coast Guard Bridge Permits Issuance, Communities of Jean Lafitte and Barataria, Jefferson Parish, LA, Wait Period Ends: October 28, 2002, Contact: William C. Farr (225) 757–7615.

Amended Notices

EIS No. 020305, Draft EIS, FHW, CA, Riverside County Integrated Project, Winchester to Temecula Corridor a New Multi-Modal Transportation Facility, Route Location and Right-of-Way Preservation, County of Riverside, CA, Comment Period Ends: November 15, 2002, Contact: Mary Ann Rondinella (916) 498–5040. Revision of FR Notice Published on 7/19/2002: CEQ Wait Period Ending on 9/20/2002 has been Extended to 11/15/2002.

EIS No. 020306, Draft EIS, FHW, CA, Riverside County Integrated Project, Hemet to Corona/Lake Elsinore Corridor a New Multi-Modal Transportation Facility, Route Location and Right-of-Way Preservation, Riverside County, CA, Comment Period Ends: November 15, 2002, Contact: Mary Ann Rondinella (916) 498–5040. Revision of FR Notice Published on 7/19/2002: CEQ Comment Period Ending 9/20/2002 has been Extended to 11/15/2002.

Dated: September 24, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–24655 Filed 9–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6633–6]

Environmental Impact Statements Regulations; availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002, (67 FR 17992).

Draft EISs

ERP No. D–NAS–A12043–00 Rating LO, Programmatic—MARS Exploration Rover–2003 (MER–2003) Project, Continuing the Long-Term Exploration of MARS, Implementation.

Summary: EPA has no objection to the proposed action.

ERP No. D–SFW–A65171–00 Rating Lo, Resident Canada Goose Management Plan to Evaluate Alternative Strategies to Reduce Manage and Control Resident Canada Goose Populations within the Conterminous United States.

Summary: EPA had no objections to the proposed management plan.

Final EISs

ERP No. F–AFS–G65008–NM, Viveash Fire Timber Salvage Project, Proposal to Harvest a Portion of the Fire-Killed Trees, Pecos/Las Vegas Ranger District, Santa Fe National Forest, NM.

Summary: EPA's comments on the DEIS were adequately addressed and EPA has no objection to the selected alternative.

ERP No. F–AFS–J65354–MT, Game Range Project, Ecosystem Health and Productivity Improvements, Fuel Loading Reduction and Game Winter Range Condition Improvements and Maintenance, Lolo National Forest Plain/Thompson Falls Ranger District, Thompson River to Squaw Creek, Thompson Falls, MT.

Summary: EPA expressed environmental concerns regarding proposed timber harvests in roadless areas. Helicopter yarding methods were proposed to minimize impacts to water quality and appropriate BMPs and inland Native Fish Strategy guidelines for Riparian Habitat Conservation Areas would be applied.

ERP No. F–AFS–L65396–ID, Mann Creek Vegetation Management and Watershed Restoration Project, Implementation, Payette National Forest, Weiser Ranger District, Washington County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FTA–D54039–PA, North Shore Connector extending existing Light Rail Transit (LRT) System from Golden Triangle of Downtown Pittsburgh to the North Shore, Funding, USCG Bridge Permit, NPDES Permit, and COE Section 10 and 404 Permits, Allegheny County, PA.

Summary: EPA feels that its comment on the DEIS were addressed adequately. The project team should continue to work closely with appropriate agencies to ensure incorporation of any changing environmental conditions in the project area.

ERP No. F–NAS–K12008–CA, Programmatic EIS—NASA Ames Development Plan (NADP) for Ames Research Center, New Research and Development Uses, Implementation, San Francisco Bay, Santa Clara County, CA.

Summary: The final Programmatic EIS includes added mitigation measures to better address construction-phase air emissions and other EPA recommendations for air quality mitigation. EPA suggested that the air quality measures be incorporated in the Record of Decision.

Dated: September 24, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–24662 Filed 9–26–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7384–9]

Office of Environmental Justice Small Grants Program—Application Guidance FY 2003

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This guidance outlines the purpose, goals, and general procedures for application and award under the Fiscal Year (FY) 2003 (October 1, 2002–September 30, 2003) Environmental Justice Small Grants Program. For FY 2003, the EPA will make available approximately $1,500,000 in grant funds to eligible organizations (pending availability of funds); $1,000,000 of this amount is available for Superfund projects only.

DATES: The application must be delivered by close of business Wednesday, December 18, 2002 to your appropriate EPA regional office (listed in section III) or postmarked by the U. S. Postal Service midnight Wednesday, December 18, 2002.

ADDRESSES: For specific application delivery please contact the appropriate EPA regional office listed in section III.

FOR FURTHER INFORMATION CONTACT: Sheila Lewis, Senior Program Analyst, EPA Office of Environmental Justice, (202) 564–0152.

SUPPLEMENTARY INFORMATION:

This guidance includes the following:

Translations Available

The Spanish translation of this application is found at the back of the published document and on the Web page *http://www.epa.gov/compliance/environmentaljustice/grants/.* Please note the forms are translated into Spanish but must be completed in English.

I. Scope and Purpose of the OEJ Small Grants Program

The purpose of this grant program is to provide financial assistance to eligible community groups (*i.e.*, community-based/grassroots organizations, churches [1], or other nonprofit organizations with a focus on community-based issues) and federally recognized tribal governments that are working on or plan to carry out projects to address environmental justice issues. Preference for awards will be given to community-based/grassroots organizations that are working on local solutions to local environmental problems. Funds can be used to develop a new activity or substantially improve the quality of existing programs that have a direct impact on affected communities. All awards will be made in the form of a grant not to exceed one year.

Background

In its 1992 report, *''Environmental Equity:* Reducing Risk for All Communities,'' the EPA found that minority and/or low-income populations may experience higher than average exposure to toxic pollutants than the general population. The EPA established the Office of Environmental Justice (OEJ) in 1992 to help these communities identify and assess pollution sources, to implement environmental awareness and training programs for affected residents, and to work with community stakeholders to devise strategies for environmental improvements.

In June 1993, OEJ was delegated granting authority to solicit, select, supervise, and evaluate environmental justice-related projects, and to disseminate information on the projects' content and effectiveness. FY 1994 marked the first year of the OEJ Small Grants Program. The chart below shows how the grant monies have been distributed since FY 1994.

Fiscal year	$ Amount	Number of awards
1994	500,000	71
1995	3,000,000	175
1996	2,800,000	152
1997	2,700,000	139
1998	2,500,000	123
1999	1,455,000	95
2000	899,000	61
2001	1,300,000	88
2002	1,113,000	73

How Does EPA Define Environmental Justice Under the Environmental Justice Small Grants Program?

Environmental justice is the *fair treatment* and *meaningful involvement* of all people regardless of race, color, national origin, culture, education, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. *Fair treatment* means that no one group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal environmental programs and policies. *Meaningful involvement* means that: (1) Potentially affected community

[1] Churches that qualify as nonprofit organizations may use EPA grant funds only for environmental justice projects EPA grant funds may not be used to advance religious point of views.

residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the decision-makers seek out and facilitate the involvement of those potentially affected.

II. Eligible Applicants and Activities

A. Who May Submit Applications and May Applicants Submit More Than One?

Any affected, non-profit community organization [2] or federally recognized tribal government may submit an application upon publication of this solicitation. Applicants must be non-profit to receive these federal funds. State-recognized tribes or indigenous peoples' organizations can apply for grant assistance if they meet the definition of a nonprofit organization. ''Non-profit organization'' means any corporation, trust, association, cooperative, or other organization that: (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses its net proceeds to maintain, improve, and/or expand its operations. Non-profit status may be demonstrated through designation by the Internal Revenue Service as a 501(c) organization or evidence that a state recognizes the organization's non-profit status. While state and local governments and academic institutions are eligible to receive grants, preference will be given to non-profit, community-based/grassroots organizations and federally recognized tribal governments. Preference may be given to those organizations that have not received previous grants under the Environmental Justice Small Grants Program. Individuals are not eligible to receive grants.

The Environmental Justice Small Grants Program is a competitive process. In order to ensure a fair evaluation process, the Agency will offer training and/or conference calls on grant application guidelines. We encourage you to participate so that you can have your questions answered in a public forum. Call your Regional office to inquire about the scheduled dates of the special training and conference calls. (*See* Contact List on pages 9–11)

The EPA will consider only one application per applicant for a given project. Applicants may submit more than one application if the applications are for separate and distinct projects or activities. Applicants that previously received small grant funds may submit an application for FY 2003 funds (October 1, 2002–September 30, 2003). Every application for FY 2003 is evaluated based on the merit of the proposed project in comparison to other FY 2003 applications. Past performance will be considered during the ranking and evaluation process for those applicants who have received previous grants.

B. What Types of Projects Are Eligible for Funding?

While there are many applications submitted from community groups for equally worthwhile projects, the EPA is emphasizing the availability of funds for research projects. Projects which are research-oriented and specific to hazardous substances are considered for funding under the *Comprehensive Environmental Response, Compensation and Liability Act* (CERCLA). The OEJ Small Grants Program also awards grants on a multi-media basis. Multimedia projects address pollution in more than one environmental medium (*e.g.*, air, water, *etc.*).

To be considered for funding, the application must meet the criteria of two statutes under Item 1 *or* the single statute under Item 2 below:

1. Multi-Media Requirements (Use Two)

Recipients of these funds must implement projects that address pollution in more than one environmental medium (*e.g.*, air, water). To show evidence of the breadth of the project's scope, the application must identify at least two environmental statutes that the project will address. To be eligible for funding, your project must include activities outlined in the following environmental statutes:

A. *Statutes.* (1) *Clean Water Act*, Section 104(b)(3): Conduct and promote the coordination of research, investigations, experiments, training, demonstration, surveys, and studies relating to the causes, extent, prevention, reduction, and elimination of water pollution.

(2) *Safe Drinking Water Act*, Section 1442(c)(3)(A): Develop, expand, or carry out a program (that may combine training, education, and employment) for occupations relating to the public health aspects of providing safe drinking water.

(3) *Solid Waste Disposal Act*, Section 8001(a): Conduct and promote the coordination of research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to solid waste (*e.g.*, health and welfare effects of exposure to materials present in solid waste and methods to eliminate such effects).

(4) *Clean Air Act*, Section 103(b)(3): Conduct research, investigations, experiments, demonstrations, surveys, and studies related to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution.

(5) *Toxic Substances Control Act*, Section 10(a): Conduct research, development, monitoring, public education, training, demonstrations, and studies on toxic substances

(6) *Federal Insecticide, Fungicide, and Rodenticide Act*, Section 20(a): Conduct research, development, monitoring, public education, training, demonstrations, and studies on pesticides.

(7) *Marine Protection, Research, and Sanctuaries Act*, Section 203: Conduct research, investigations, experiments, training, demonstrations, surveys, and studies relating to the minimizing or ending of ocean dumping of hazardous materials and the development of alternatives to ocean dumping.

(8) *Noise Control Act of 1972*, Section 14 (b): Conduct research on the effects, measurement, and control of noise.

B. *Goals for multi-media projects.* In addition to the requirements outlined above, the application must also include a description of how an applicant plans to meet at least two of the three program goals listed below. *See* section III ''Application Requirements'' for more details.

(1) Identify necessary improvements in communication and coordination among all stakeholders, including existing community-based/grassroots organizations and local, state, tribal, and federal environmental programs. Facilitate communication and information exchange, and create partnerships among stakeholders to address disproportionate, high and adverse environmental exposure (*e.g.*, workshops, awareness conferences, establishment of community stakeholder committees);

(2) Build community capacity to identify local environmental justice problems and involve the community in the design and implementation of activities to address these concerns. Enhance critical thinking, problem-solving, and active participation of

[2] As a result of the Lobbying Disclosure Act of 1995, EPA (and other federal agencies) may not award grants to non-profit organizations that are classified as 26 U.S.C. 501(c)(4) organizations by the Internal Revenue Service and engage in lobbying activities.

affected communities. (*e.g.*, train-the-trainer programs).

(3) Enhance community understanding of environmental and public health information systems and generate information on pollution in the community. If appropriate, seek technical experts to demonstrate how to access and interpret public environmental data (*e.g.*, Geographic Information Systems (GIS), Toxic Release Inventories (TRI) and other databases).

2. Requirements for Research Grants Funded Under CERCLA

Recipients of these funds must implement projects that are specifically research oriented and specific to hazardous substances. The EPA's grant regulations define ''research'' as ''systematic study directed toward fuller scientific knowledge or understanding of the subject studied,'' 40 CFR 30.2(dd). The EPA has interpreted ''research'' to include studies that extend to socioeconomic, institutional, and public policy issues as well as the ''natural'' sciences. Your research project *Must* meet the following criteria:

A. *Eligibility.* (1) CERCLA section 311(c) authorizes EPA to fund research grants. Research must relate to the detection, assessment, and evaluation of the effects on and risks to human health from hazardous substances and the detection of hazardous substances in the environment.

(2) Applicants must demonstrate that the research project relates to ''hazardous substances'' as that term is defined by CERCLA section 101(14). There is a list of hazardous substances at 40 CFR 302.4 which, while not exclusive, does provide useful guidance.

(3) Research funded under CERCLA section 311(c) cannot relate to contamination from petroleum products in accordance with the definition of hazardous substances found at CERCLA section 101(14). Projects that involve petroleum contamination that is ''mixed'' with other contaminants may be considered on a case by case basis.

(4) The project must be of a research nature only, *i.e.*, survey, research, collecting and analyzing data which will be used to expand scientific knowledge or understanding of the subject studied. Research projects, however, need not be limited to academic studies. Projects which expand the scientific knowledge or understanding, of a community, about hazardous substances issues, that effect their community, can be funded.

(5) The project cannot carry out training activities, other than training in research techniques. In other words CERCLA section 311(c) research projects cannot be designed as outreach, technical assistance, or public education activities.

(6) The project can include conferences only if the purpose of the conference is to present research results or to gather research data.

B. *Goal for Research Projects.* In addition to the special research requirements for grants under CERCLA outlined above, the application must include a description of how the research projects can serve as models for other communities when confronted with similar problems. *See* section III ''Application Requirements'' for more details.

Please note: (1) If your project includes scientific research and/or data collection, you must be prepared to submit a Quality Assurance Plan (QAP) to your EPA Project Officer prior to the beginning of the research. Multi-media projects may also require a Quality Assurance Plan.

(2) CERCLA grants are limited to research as required under CERCLA section 311(c). *Do not propose projects which include activities under the ''multi-media'' authorities described in section 1, above, to carry out a research project.*

The issues discussed above may be defined differently among applicants from various geographic regions, including areas outside the continental U.S. (Alaska, American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands). Each application should define its issues as they relate to the specific project. The narrative/work plan must include a succinct explanation of how the project may serve as a model in other settings and how it addresses a high-priority environmental justice issue. The degree to which a project addresses a high-priority environmental justice issue will vary and is defined by applicants according to their local environmental justice concerns.

C. How Much Money May Be Requested, and Are Matching Funds Required?

The ceilings in federal funds for individual grants are $15,000 for Multi-Media projects and $20,000 for Research projects. Applicants are not required to provide matching funds.

D. Are There Any Restrictions on the Use of the Federal Funds?

Yes. EPA grant funds can only be used for the purposes set forth in the grant agreement, and be consistent with the statutory authority for the award. Grant funds from this program cannot be used for matching funds for other federal grants, lobbying, or intervention in federal regulatory or adjudicatory proceedings. In addition, the recipient may not use these federal assistance funds to sue the federal government or any other government entity. Refer to 40 CFR 30.27, entitled ''Allowable Costs''. The scope of environmental justice grants may not include construction, promotional items (*e.g.*, T-shirts, buttons, hats), and furniture purchases.

III. Application Requirements

A. What Is Required for Applications?

Proposals from eligible organizations *must* have the following:

1. Application for Federal Assistance (SF 424) the official form is required for all federal grants that requests basic information about the grantee and the proposed project. The applicant must submit the original application, and one copy, signed by a person duly authorized by the governing board of the applicant. Please complete part 10 of the SF 424 form, ''Catalog of Federal Domestic Assistance Number'' with the following information: 66.604—Environmental Justice Small Grants Program.

2. The Federal Standard Form (SF 424A) and budget detail, which provides information on your budget. For the purposes of this grant program, complete only the non shaded areas of SF 424A. Budget figures/projections should support your work plan/narrative. The EPA portion of each grant will not exceed $15,000 for Multi-Media or $20,000 for Research projects. Therefore, your budget should reflect this limit on federal funds.

3. A narrative/work plan of the proposal is not to exceed five pages. A narrative/work plan describes the applicant's proposed project. The pages of the work plan must be letter size (8½ x 11 inches), with normal type size (12 characters per inch), and at least 1″ margins.

The narrative/work plan is one of the most important aspects of your application and (assuming that all other required materials are submitted) will be used as the primary basis for selection. Work plans must be submitted as follows;

a. A one page summary that *includes the following:*

- Identifies the environmental justice issue(s) to be addressed by the project;
- Identifies the Environmental Justice community/target audience;
- Identifies the environmental Statutes/Acts addressed by the project; and
- Identifies the program goal that the project will meet and how it will meet them.

b. A concise introduction that states the nature of the organization (*i.e.*, how

long it has been in existence, if it is incorporated, if it is a network, *etc.*), how the organization has been successful in the past, purposes of the project, the environmental justice community/target audience, projects completion plans/time frames, and expected results.

c. A concise project description that describes how the applicant is community-based and/or plans to involve the target audience in the project and how the applicant plans to meet at least two of the three program goals outlined in section IIB: ''Environmental Justice Small Grants Program Goals.'' Additional credit will not be given for projects that fulfill more than two goals.

d. A conclusion discussing how the applicant will evaluate and measure the success of the project, including the anticipated benefits and challenges in implementing the project.

4. An appendix with resumes of up to three key personnel who will be significantly involved in the project.

5. Letter(s) of commitment. If your proposed project includes the significant involvement of other community organizations, your application must include letters of commitment from these organizations.

6. Non-Profit Status. The applicant must provide documentation in evidence of the organization's non-profit status.

Applications that do not include the information listed above in items 1–4 and item 5, if applicable, will not be considered for an award.

Please mark any information in the proposal that you consider confidential. EPA will follow the procedures at 40 CFR part 2 if information marked confidential is requested from the Agency under the Freedom of Information Act.

Please note: Your application to this EPA program may be subject to your state's intergovernmental review process and/or the consultation requirements of section 204, Demonstration Cities and Metropolitan Development Act. *See* 40 CFR part 29 for details. Check with your state's Single Point of Contact to determine your requirements. Some states do not require this review. Applicants from American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands should also check with their Single Point of Contact. You may contact your EPA regional contact (listed below) or EPA Headquarters Grants Policy, Information and Training Branch at (202) 564–5325 for additional information. If your state does not have a single point of contact you must notify directly affected state, local and area wide agencies if your application is selected for an award. See 40 CFR 29.7(b). Federally recognized tribal governments are not required to comply with this procedure.

B. When and Where Must Applications Be Submitted?

The applicant must submit/mail one signed original application with required attachments and one copy to the primary contact at the EPA regional office listed below. The application must be delivered by close of business Wednesday, December 18, 2002 to your appropriate EPA regional office (listed below) or postmarked by the U.S. Postal Service midnight Wednesday, December 18, 2002. Forms and relevant background material are available at *http://www.epa.gov/compliance/environmentaljustice/grants/*.

Regional Contact Names and Addresses

Region 1: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Primary Contact: Ronnie Harrington, (617) 918–1703, *harrington.veronica@epa.gov*, USEPA Region 1 (SAA), 1 Congress Street—11th Floor, Boston, MA 02203–0001.

Secondary Contact: Pat O'Leary, (617) 918–1978, *oleary.pat@epa.gov.*

Region 2: New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Primary Contact: Terry Wesley, (212) 637–3576, *wesley.terry@epa.gov*, USEPA Region 2, 290 Broadway, 26th Floor, New York, NY 10007.

Secondary: Natalie Loney, (212) 637–3639, *loney.natalie@epa.gov.*

Region 3: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Primary Contact: Reginald Harris, (215) 814–2988, *harris.reggie@epa.gov,* USEPA Region 3 (3DA00), 1650 Arch Street, Philadelphia, PA 19103–2029.

Region 4: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Primary Contact: Gloria Love, (404) 562–9672, *love.gloria@epa.gov,* USEPA Region 4, 61 Forsyth Street, Atlanta, GA 30303–8960.

Secondary: Cynthia Peurifoy, (404) 562–9649, *peurifoy.cynthia@epa.gov.*

Region 5: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Primary Contact: Margaret Millard, (312) 353–1440, *millard.margaret@epa.gov,* USEPA Region 5 (T–165), 77 West Jackson Boulevard, Chicago, IL 60604–3507.

Secondary: Karla Owens, (312) 886–5993, *owens.karla@epa.gov.*

Region 6: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Primary Contact: Nelda Perez, (214) 665–2209, *perez.nelda@epa.gov,* USEPA Region 6, Fountain Place, 12th Floor, 1445 Ross Avenue (RA–D), Dallas, Texas 75202–2733.

Secondary Contact: Olivia Balandran, (214) 665–7257, *balandran.olivia-r@epa.gov.*

Region 7: Iowa, Kansas, Missouri, Nebraska

Primary Contact: Althea Moses, *moses.althea@epa.gov.* USEPA Region 7, 901 North 5th Street (ECORA), Kansas City, KS 66101.

Secondary: Monica Espinosa, (913) 551–7058, *espinosa.monica@epa.gov.*

Region 8: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Primary Contact: Nancy Reish, (303) 312–6040, *reish.nancy@epa.gov,* USEPA Region 8 (8ENF–EJ), 999 18th Street, Suite 300, Denver, CO 80202–2466.

Secondary: Jean Belille, (303) 312–6556, *belille.jean@epa.gov.*

Region 9: Arizona, California, Hawaii, Nevada, American Samoa, Guam

Primary Contact: Willard Chin, (415) 972–3797, *chin.willard@epa.gov,* USEPA Region 9 CMD–1, 75 Hawthorne Street, San Francisco, CA 94105.

Secondary: Rachael Loftin, (415) 972–3272, *loftin.rachael@epa.gov.*

Region 10: Alaska, Idaho, Oregon, Washington

Primary Contact: Cecilia A. Contreras, (206)–553–2899, *contreras.cecilia@epa.gov,* USEPA Region 10 (CEJ–163), 1200 Sixth Avenue, Seattle, WA 98101.

Secondary: Victoria Plata, (206) 553–8580, *plata.victoria@epa.gov.*

IV. Process for Awarding Grants

A. How Will Applications Be Reviewed?

The *EPA regional offices will review, evaluate, and select grant recipients.* Applications will be screened to ensure that they meet all eligible activities and requirements described in sections II and III. Applications will be disqualified if they do not meet these eligibility standards. Applications will also be evaluated by regional review panels based on the criteria outlined below.

1. Threshold Criteria

Applications that propose projects that are inconsistent with the EPA's statutory authority or the goals for the

program are ineligible for funding and will not be evaluated and ranked. Regional offices will contact applicants whose proposals do not meet the threshold requirements to determine whether the proposal can be revised to meet the threshold requirements.

2. Evaluation Criteria

Proposals will be ranked using the following criteria:

a. Responsiveness of the Work plan to Environmental Justice issues affecting the community to be served (20 Points).

b. Effectiveness of the project design (40 Points).

c. Clarity of the Measures of Success (25 Points).

d. Qualifications of Project Staff (15 Points).

B. How Will the Final Selections Be Made?

After the individual projects are reviewed and ranked, the EPA regional officials will compare the best applications and make final selections. Additional factors that the EPA will take into account include geographic and socioeconomic balance, diverse nature of the projects, cost, and projects whose benefits can be sustained after the grant is completed. Regional Administrators will select the final grants.

Please note that this is a very competitive grant's program. Limited funding is available and many grant applications are expected to be received. Therefore, the Agency cannot fund all applications. If your project is not funded, a listing of other EPA grant programs may be found in the Catalog of Federal Domestic Assistance. This publication is available on the Internet at *www.cfda.gov* and at local libraries, colleges, or universities.

C. How Will Applicants Be Notified?

After all applications are received, the regional EPA offices will mail acknowledgments to applicants in their regions. Once applications have been recommended for funding, the EPA Regions will notify the finalists and request any additional information necessary to complete the award process. The finalists will be required to complete additional government application forms prior to receiving a grant, such as the EPA Form SF–424B (Assurances—Non-Construction Programs) and EPA Form 5700–48, the Certification Regarding Debarment, Suspension, and Other Responsibility Matters. The federal government requires all grantees to certify and assure that they will comply with all applicable federal laws, regulations, and requirements. The EPA Regional Environmental Justice Coordinators or their designees will notify those applicants whose projects are not selected for funding.

V. Expected Time-Frame for Reviewing and Awarding Grants

October 1, 2002—FY 2003 OEJ Small Grants Program Application Guidance is available and published in the **Federal Register**.

October 5, 2002 to December 18, 2002—Eligible grant recipients develop and complete their applications.

December 18, 2002—Applications must be delivered by close of business Wednesday, December 18, 2002 to your appropriate EPA regional office (listed in section III) or postmarked by U.S. Postal Service midnight Wednesday, December 18, 2002.

December 19, 2002 to February 28, 2003—EPA regional program officials review and evaluate applications and select grant finalists.

March 1, 2003 to July 30, 2003—Applicants will be contacted by the Region if their application is being considered for funding. Additional information may be required from the finalists, as indicated in section IV. The EPA regional grant offices process grants and make awards.

August 30, 2003—EPA expects to release the national announcement of the FY 2003 Environmental Justice Small Grant Recipients.

VI. Project Period and Final Reports

Activities must be completed and funds spent within the time frame specified in the grant award, one year. Project start dates will depend on the grant award date (most projects begin in August or September). The recipient organization is responsible for the successful completion of the project. The qualifications of the recipient's project manager is subject to approval by the EPA project officer. However, the EPA may not identify any particular person as the project manager. Unless specified in the award, all recipients must submit final reports for EPA approval within ninety (90) days of the end of the project period. Specific report requirements (*e.g.*, Quarterly or Semi-annual Progress Reports, Final Technical Report and Financial Status Report) will be described in the award agreement. The EPA will collect, review, and disseminate grantees' final reports to serve as model programs.

For further information about this program, please visit the EPA's Web site at *http://www.epa.gov/compliance/environmentaljustice/index.html* or call our hotline at 1–800–962–6215 (available in Spanish).

VII. Fiscal Year 2004 Environmental Justice Small Grants Program

A. How Can I Receive Information on the Fiscal Year 2004 (October 1, 2003 to September 30, 2004) Environmental Justice Small Grants Program?

If you wish to be placed on the national mailing list to receive information on the FY 2004 Environmental Justice Small Grants Program, e-mail your request along with your name, organization, address, and phone number to *lewis.sheila@epa.gov* or mail your request along with your name, organization, address, and phone number to:

U.S. Environmental Protection Agency, Environmental Justice Small Grants Program (2201A), FY 2004 Grants Mailing List, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. 1 (800) 962–6215.

If you wish to receive information on local Environmental Justice programs, you may mail or e-mail your request along with your name, organization, address, and phone number to the appropriate regional office listed on pages 9–11 of this application.

Thank you for your interest in our Small Grants Program.

Dated: September 20, 2002.

Linda K. Smith,

Acting Director, Office of Environmental Justice.

[FR Doc. 02–24643 Filed 9–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0257; FRL–7275–4]

Nominations for FIFRA Scientific Advisory Panel; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provides the names, addresses, professional affiliations, and selected biographical data of persons nominated to serve on the Federal Insecticide, Fungicide, and Rodenticide Act, Scientific Advisory Panel (FIFRA)/(SAP) established under section 25(d) of the FIFRA. The Panel was created on November 28, 1975, and made a statutory Panel by amendment to FIFRA, dated October 25, 1988. Public comment on the nominations is invited, as these comments will be used to assist the Agency in selecting three new chartered Panel members.

DATES: Comments, identified by docket ID number OPP–2002–0257, must be received on or before October 28, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0257 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Steven Knott, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 564–8450; fax number (202) 564–8382; e-mail address: knott.steven@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0257. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is availabe for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0257 in the subject line on the first page of your response.

1. *By mail.* Submit your written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0/9.0 or ASCII file format, and avoid the use of special characters or any form of encryption. Be sure to identify by docket ID number OPP–2002–0257. You may also file a request online at many Federal Depository Libraries.

II. Background

Amendments to FIFRA enacted November 28, 1975, include a requirement under section 25(d) that notices of intent to cancel or reclassify pesticide registrations pursuant to section 6(b)(2), as well as proposed and final forms of rulemaking pursuant to section 25(a), be submitted to FIFRA/SAP prior to being made public or issued to a registrant. In accordance with section 25(d), the FIFRA/SAP is to have an opportunity to comment on the health and environmental impact of such actions. The Panel shall also make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. In accordance with the statute, the FIFRA/SAP is composed of seven permanent members, selected and appointed by the Deputy Administrator of EPA from nominees submitted by both the National Science Foundation (NSF) and the National Institutes of Health (NIH). The Agency is, at this time, selecting three new members to serve on the Panel as a result of membership terms that will expire this year. EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) requested nominations of experts to be selected from, but not limited to, the fields of pediatric medicine, biostatistics, and toxicology/veterinary medicine. Nominees should be well published and current in their fields of expertise. The statute further stipulates that we publish the name, address, professional affiliation, and a brief biographical sketch of each nominee in the **Federal Register** and solicit public comments concerning the candidates nominated.

III. Charter

A Charter for the FIFRA/SAP, dated October 25, 2000, was issued in accordance with the requirements of the Federal Advisory Committee Act (FACA), Public Law 92–463, 86 Stat. 770 (5 U.S.C. App. I). The qualifications of members as provided by the Charter follow.

A. Qualifications of Members

Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. No persons shall be ineligible to serve on the Panel by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except EPA). The Deputy Administrator appoints individuals to serve on the Panel for staggered terms of 4 years. Panel members are subject to the provisions of 40 CFR part 3, subpart F, Standards of Conduct for Special Government Employees, which include rules regarding conflicts of interest. Each nominee selected by the Deputy Administrator, before being formally appointed, is required to submit a

Confidential Statement of Employment and Financial Interests, which shall fully disclose, among other financial interests, the nominee's sources of research support, if any.

In accordance with section 25(d) of FIFRA, the Deputy Administrator shall require all nominees to the Panel to furnish information concerning their professional qualifications, educational background, employment history, and scientific publications. The Agency is required to publish in the **Federal Register** the name, address, and professional affiliations of each nominee and to seek public comment on the nominees.

B. Applicability of Existing Regulations

With respect to the requirements of section 25(d) of FIFRA that the Administrator promulgate regulations regarding conflicts of interest, the Charter provides that EPA's existing regulations applicable to special government employees, which include advisory committee members, will apply to the members of the FIFRA/SAP. These regulations appear in 40 CFR part 3, subpart F. In addition, the Charter provides for open meetings with opportunities for public participation.

C. Process of Obtaining Nominees

In accordance with the provisions of section 25(d) of FIFRA, EPA, in April 2002, requested the NIH and NSF to nominate scientists to fill three vacancies occurring on the Panel. The Agency requested nomination of experts in the fields of toxicology/veterinary medicine, clinical pediatric research, and biostatistics, and related fields. NIH and NSF responded by letter, providing the Agency with six nominees each. Three of the twelve nominees withdrew their names from consideration, because they believed their current responsibilities would preclude active participation in FIFRA/SAP meetings.

IV. Nominees

The following are the names, addresses, professional affiliations, and selected biographical data of nominees being considered for membership on the FIFRA/SAP. The Agency expects to select three of the nominees to fill three vacancies occurring during the calendar year 2002.

A. Nominations for the Field of Toxicology/Veterinary Medicine

1. *Nominee.* Faustman, Elaine M., Ph.D., D.A.B.T., Professor and Director, Institute for Risk Analysis and Risk Communication, School of Public Health and Community Medicine, University of Washington.

i. *Expertise.* Reproductive and developmental toxicology of metals, *in vitro* and molecular biological methodologies, quantitative risk assessment.

ii. *Education.* A.B. Chemistry and Zoology, Hope College, 1976; Ph.D., Pharmacology/Toxicology, Michigan State University, 1980; post-doctoral studies in Toxicology and Environmental Pathology, School of Medicine, University of Washington.

iii. *Professional experience.* Dr. Faustman has served on the National Institute of Environmental Health Sciences/National Toxicology Program (NIEHS-NTP) Board of Scientific Counselors and the National Academy of Sciences Committee in Toxicology. She has also served as Associate Editor of Fundamental and Applied Toxicology and on the editorial boards of Reproductive Toxicology and Toxicology Methods. Dr. Faustman is the Director of EPA-NIEHS funded Child Health Care Center which is evaluating key mechanisms defining children's susceptibility to pesticides. She is an elected Fellow of the American Association for the Advancement of Science, and has recently served as Chair for the American Academy of Sciences Committee on Developmental Toxicology. She is a member of the NIEHS-NTP Committee on Alternative Toxicology Methods.

2. *Nominee.* Froines, John R., Ph.D., Professor, Department of Environmental Health Sciences, UCLA School of Public Health; Director, UCLA Center for Occupational and Environmental Health; Director, Southern California Particle Center and Supersite.

i. *Expertise.* Chemical toxicology and risk assessment, biomarkers and toxicokinetics of chemical carcinogens, policy and priorities in environmental and occupational health.

ii. *Education.* B.S. Chemistry, University of California, Berkeley, 1963; M.S., Physical-Organic Chemistry, Yale University, 1964; Ph.D., Physical-Organic Chemistry, Yale University, 1967.

iii. *Professional experience.* Dr. Froines has served on the National Academy of Sciences (NAS) Committee on Environmental Epidemiology, including principal authorship of two chapters on exposure assessment in two NAS reports. He has served as chair of the Advisory Panel for the Office of Technology Assessment project, ''Gauging Control Technology and Regulatory Impacts in Occupational Safety and Health'' (1992–1995). He has served on the Federal Committee to the Department of Energy (DOE) on the Beryllium Standard (1997–1998), on the Carcinogen Identification Committee (1995–2001), and the President's (University of California U.C.) committees on health, safety, and environmental concerns with the three national laboratories managed by U.C. Dr. Froines is presently Chairman of the Scientific Review Panel, Air Resources Board; member of the National Toxicology Program Board of Scientific Counselors; member of several committees of the South Coast Air Quality Management District in southern California, and a member of the Scientific Advisory Board, Center for Vulnerable Populations Research.

3. *Nominee.* Isom, Gary E., Ph.D., Professor of Toxicology, Vice President for Research, and Dean of the Graduate School, Purdue University.

i. *Expertise.* Chemical and cyanide toxicology and related neurological disorders.

ii. *Education.* B.S., Pharmacy, Idaho State University, Ph.D., Pharmacology, Washington State University, 1973.

iii. *Professional experience.* Associate Professor of Toxicology at Idaho State University and at Purdue University. Dr. Isom has served on numerous review panels for NIH and NSF. He has published in the journals Toxicology and Applied Pharmacology, Journal of Neurochemistry, Neurotoxicology, and the Journal of Pharmacology and Experimental Therapeutics. Dr. Isom presently serves on the Advisory Committee for the Engineering Directorate at NSF. In 1999 he was appointed to the Science and Technology Advisory Board of the Defense Intelligence Agency.

4. *Nominee.* Russell, Stephen W., D.V.M., Ph.D., Wilkinson Distinguished Professor of Cancer Research, University of Kansas Cancer Center, University of Kansas Medical Center, Kansas City, KS (emeritus since 2001).

i. *Expertise.* Immunopathology.

ii. *Education.* B.S. Enology, University of California, Davis, 1960; D.V.M., UC Davis, 1966; Ph.D., Comparative Pathology, UC Davis, 1972; postdoctoral fellowship, Scripps Clinic and Research Foundation, immunopathology, 1972–1973.

iii. *Professional experience.* Dr. Russell has served as member and as Chair of the Animal Resources Review Committee of NIH (1986–1990). He has served on a Special Review Committee on Animal Models of Solid Tumors for NIH; the Immunological Sciences Review Panel, US Army Breast Cancer Research Program; and on the Board of Scientific Counselors, National Center for Research Resources, NIH. Dr. Russell has served on editorial boards of, and

has published in, several professional journals, including Journal of Leucocyte Biology, Journal of Immunology, Yearbook of Pathology and Clinical Pathology, Infection and Immunity, and Gene. Dr. Russell was Director of the University of Kansas Cancer Center, University of Kansas Medical Center, Kansas City, KS from 1991–1995. He was Associate Director for Research at the University of Kansas Cancer Center from 1987–1991. From 1980–1987 he was Professor and Chairman of the Department of Comparative and Experimental Pathology, College of Veterinary Medicine, and Professor, Departments of Pathology and Immunology and Medical Microbiology, College of Medicine, University of Florida, Gainesville, FL.

B. Nominations for the Field of Clinical Pediatrics Research

1. *Nominee.* Frank, Michael M., M.D., Professor and Chairman, Department of Pediatrics; Professor of Medicine; Professor of Immunology, Duke University.

i. *Expertise.* Pediatric Immunology and Toxicology.

Education. A.B., Zoology, University of Wisconsin, 1956; M.D., Harvard Medical School, 1960.

ii. *Professional experience.* Chief, Laboratory of Clinical Investigation, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 1977–1990; Clinical Director, NIAID, NIH, 1977–1990; Head, Clinical Immunology Section, Laboratory of Clinical Investigation, NIAID, NIH, 1971–1990; Senior Investigator, LCI, NIAID, NIH, 1968–1971. Dr. Frank has served on editorial boards of, and has published in, several professional journals, including Journal of Immunology, Journal of Clinical Investigation, Blood, Reviews in Infectious Diseases, Current Opinions in Pediatrics, and Medicine.

2. *Nominee.* Handwerger, Stuart, M.D., Director of Endocrinology, Cincinnati Children's Hospital Medical Center, Cincinnati, OH; Robert and Mary Shoemaker Professor of Pediatrics and Professor of Cell Biology, Neurobiology and Anatomy, University of Cincinnati College of Medicine, Cincinnati, OH.

i. *Expertise.* Placental and uterine biology, fetal and reproductive endocrinology, diagnosis and treatment of growth disorders.

ii. *Education.* B.A., Biological Sciences, Johns Hopkins University, Baltimore, MD, 1960; M.D., University of Maryland, Baltimore, MD, 1964.

iii. *Professional experience.* Professor of Cell Biology, Neurobiology and Anatomy, Senior Member, Developmental Biology Program, Member, Barrett Cancer Center, University of Cincinnati College of Medicine, 1990 to present; Director, Post-Doctoral Training, Department of Pediatrics, Cincinnati Children's Medical Center, Cincinnati, OH 1993 to present. Dr. Handwerger was Director of the Division of Endocrinology, Department of Pediatrics, Duke University School of Medicine, Durham, NC, 1979 to 1990. During this same time period, he was a Senior Member, Duke Comprehensive Cancer Center, Duke University School of Medicine.

C. Nominations for the Field of Biostatistics

1. *Nominee.* Bailer, A. John, Ph.D., Professor, Department of Mathematics and Statistics, and affiliate member, Department of Zoology, Miami University, Oxford, OH.

i. *Expertise.* Biostatistics, risk estimation and characterization.

ii. *Education.* B.S., Mathematics and Statistics, 1978; B.A., Psychology, 1982, Miami University, Oxford, OH; M.A., Quantitative Psychology, University of North Carolina, Chapel Hill, 1984; Ph.D., Biostatistics, University of North Carolina, Chapel Hill, 1986.

iii. *Professional experience.* Professor of Statistics, Miami University, Oxford, OH, 1988 to present; invited participant in technical workshop on Whole-Effluent Toxicity sponsored by the Society of Environmental Toxicology and Chemistry, September 1995; member on two subcommittees of the Board of Scientific Counselors of the National Toxicology Program, 1997 to 2000; member of International Statistical Institute risk assessment committee, 2000 to present; member of statistics subcommittee at NIEHS/NTP Low Dose Peer Review for Endocrine Disruptors, Research Triangle, NC, 2000; member of National Research Council Subcommittee Toxologic Assessment of Low-Level Exposures to Chemical Warfare, 2001 to present; consultant to NAS committee ''Implications of Dioxin in the Food Supply'' 2001.

2. *Nominee.* Doerge, Rebecca W., Ph.D., Associate Professor of Agronomy and Statistics, Purdue University, West Lafayette, IN.

i. *Expertise.* Statistical genomics, biostatistics.

ii. *Education.* B.S., Mathematics, University of Utah, 1986; M.Stat., University of Utah, 1988; Ph.D., Statistics, North Carolina State University, 1993; post-doctoral fellow, Department of Biometrics and Plant Breeding, Cornell University, 1995.

iii. *Professional experience.* Dr. Doerge has won awards for her teaching skills, among them, Outstanding Teacher of Undergraduates in the School of Science, Purdue University, 1998. Dr. Doerge has published in Endocrinology, Journal of Immunology, American Journal of Pathology, Statistical Science, Heredity, Genetics, and Trends in Genetics. She will co-chair a meeting on Quantitative Genetics and Genomics, in February 2003.

3. *Nominee.* Heeringa, Steven G., Ph.D., Director of the Division of Surveys and Technologies, Institute for Social Research, University of Michigan, Ann Arbor, MI.

i. *Expertise.* Statistical methods, design and analysis.

ii. *Education.* Ph.D., Biostatistics, University of Michigan.

iii. *Professional experience* Dr. Heeringa has over 25 years of statistical sampling experience, directing the development of the Michigan Institute for Social Research (ISR), national sample design as well as sample designs for ISR's major longitudinal and cross-sectional survey programs. During this period he has been actively involved in research in statistical methods and procedures such as weighting, variance estimation and the imputation of missing data that are required in the analysis of sample survey data. His publications in these areas have been extensive. He has served as an advisor to panels of the NIH and the World Health Organization (WHO). Since 2000, Dr. Heeringa has served as an ad hoc member of more than 10 EPA scientific review panels. He teaches survey sampling methods internationally, and serves as a sample design consultant to a wide variety of international research programs.

List of Subjects

Environmental protection, Pesticide and pests.

Dated: September 19, 2002.

Joseph Merenda,

Director, Office of Science Coordination and Policy.

[FR Doc. 02–24647 Filed 9–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0169; FRL–7274–2]

Fenamiphos; Notice of Receipt of Request to Voluntarily Cancel All Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request from the sole registrant, Bayer Corporation, to voluntarily cancel all their registrations for products containing fenamiphos, effective as of May 31, 2007. The aforementioned registrant has requested voluntary cancellation of their fenamiphos product registrations and has requested that EPA waive the 180–day comment period. In light of this request, EPA is granting the request to waive the 180–day comment period and is providing a 30–day public comment period before taking action on the requested cancellation. EPA intends to grant the requested registration cancellation at the close of the comment period, effective as of May 31, 2007.

DATED: Comments on the requested registration cancellations must be submitted to the address provided below and identified by docket ID number OPP–2002–0169. Comments must be received on or before October 28, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION** section below. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0169 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Tawanda Spears, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8050; e-mail address: spears.tawanda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest if you manufacture, sell, distribute, or use fenamiphos products. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about fenamiphos, go directly to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/, and select ''reregistration eligibility (REDs)'' under ''Reregistration and Special Review,'' and then look up the entry for fenamiphos under letter ''F.''

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0169. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0169 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), U.S. Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. Cancellations

EPA is publishing this notice in response to the registrant's request to cancel all their registrations for products containing fenamiphos, effective as of May 31, 2007. Please refer to the table below for specific product registrations that are subject to cancellation. EPA assessed the risk associated with the use of fenamiphos pesticide products and determined additional data needs and/or mitigation measures were necessary, where applicable, to support the continued use of fenamiphos products. Consequently, Bayer Corporation, the sole registrant of fenamiphos, elected to request voluntary cancellation of all their fenamiphos product registrations. Bayer noted its decision was predicated largely on the limited use of fenamiphos, relative to the expenses associated with supporting the chemical. In conjunction with the request for voluntary cancellation, Bayer Corporation has also agreed to amend their existing fenamiphos product registrations and implement interim risk mitigation measures. EPA intends to accept the registrant's request barring adverse comments received during the 30–day public comment period.

Pursuant to section 6(f)(1)(A) of FIFRA, Bayer Corporation, 8400 Hawthorne Rd., P.O. Box 4913, Kansas City, MO 64120–0013 has submitted a request to cancel their existing manufacturing and end-use product registrations containing fenamiphos, effective as of May 31, 2007. The product registrations, for which cancellations were requested, are identified in the following table:

Fenamiphos Products	EPA Registrations
Nemacur Technical-Insecticide	3125-269
Nemacur Concentrate Nematicide-Insecticide	3125-333
Nemacur 3	3125-283
Nemacur 15% Granular	3125-283
Nemacur 10% Turf and Ornamental Nematicide	3125-237

B. Amendments

In addition to the request to cancel all of their fenamiphos product registrations, Bayer has also agreed to amend their existing fenamiphos product registrations to: (1) Prohibit all use and formulation for use on extremely vulnerable soils after May 31, 2005; (2) cap production at 500,000 pounds for fenamiphos manufacturing-use products used in the United States for the year ending May 31, 2003; and (3) cap production for each subsequent year at 20% of the previous year's production during the 5–year phase-out period. Lastly, Bayer has submitted revised labels to the Agency to implement the risk mitigation measures and changes to the product labels identified in the fenamiphos IRED document (i.e., establishing seasonal maximum application rates and reducing current rates).

III. Proposed Existing Stocks and Import Tolerances Provisions

A. Existing Stocks

Bayer has requested voluntary cancellation of the fenamiphos registrations identified in the table above. EPA intends to grant the request for voluntary cancellation, effective as of May 31, 2007. For purposes of the cancellation order that the Agency intends to issue at the close of the comment period for this announcement, the term ''existing stocks'' will be defined, pursuant to EPA's existing stocks policy at 56 FR 29362, as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation or amendment. As of May 31, 2007, all sale and distribution by Bayer, the sole registrant, of existing stocks (manufacturing-use and end-use products), shall be prohibited. Persons other than the registrant may sell and distribute such products until May 31, 2008. Use of stocks in the channels of trade may continue until depleted, except where prohibited by the label. Any distribution, sale, or use of existing stocks after the effective date of the cancellation order that the Agency intends to issue that is not consistent with the terms of that order will be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA.

B. Import Tolerances

The registrant anticipates that commodities treated with fenamiphos may continue to be imported into the United States after the final effective date of cancellation, and after existing stocks in the United States are exhausted. As such, Bayer intends to support import tolerances for banana, citrus, grape, pineapple, and garlic.

List of Subjects

Environmental protection, Chemicals, Cancellations.

September 19, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–24648 Filed 9–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0260; FRL–7275–2]

Caffeine; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a quarantine exemption request from the U.S. Department of Agriculture Animal and Plant Health Inspection Service to use the pesticide caffeine (1*H*-purine-2,6-dione,3,7-dihydro-1,3,7-trimethyl-) (CAS No. 58–08–2) to treat up to 200 acres of floriculture and nursery crops, parks, hotels and resort areas, and forest habitats to control Coqui and Greenhouse frogs. The Applicant proposes the use of a new chemical which has not been registered by EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments, identified by docket ID number OPP–2002–0260 must be received on or before October 15, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; fax number: (703) 308–5433; e-mail address: *Sec-18-Mailbox@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a federal or state government agency involved in administration of environmental quality programs. Potentially affected entities may include, but are not limited to:

Federal or state government entity, (NAICS 9241), e.g., Department of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0260. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets

at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0260. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0260. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0260.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0260. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA, APHIS) has requested the Administrator to issue a quarantine exemption for the use of caffeine on floriculture and nursery crops, parks, hotels and resort areas, and forest habitats to control Coqui and Greenhouse frogs. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that it is necessary to control the Coqui and Greenhouse frogs (*Eleutherodactylus coqui* and *E. planirostris*), in areas of Hawaii where they have become accidentally introduced, via infested nursery plantings. These species are not native to Hawaii, but come from the Caribbean, and have the potential to cause serious damage to the native ecosystems, including endangered and threatened species. *E.coqui* is now firmly established on Maui and the Island of Hawaii and *E. planirostris* is on Kauai, Oahu, Maui, and the Island of Hawaii. The sites where they are established include commercial plant nurseries, residential areas, resorts and hotels, parks, and forest habitats. *Eleutherodactylus* are spread to additional sites primarily through transportation of infested plant material to uninfested areas.

There is great concern that these frogs pose a serious threat to both agriculture and the native Hawaiian forest ecosystems, including many endangered species. These species may exert tremendous predation pressure on a wide variety of native arthropods, many of which are already stressed to the edge of extinction due to the establishment of other alien predators and parasitoids. Additionally, these frog species will compete for insect food sources with native birds, the majority of which are partially or completely insectivorous. The Hawaiian hoary bat and other arthropods also depend upon insects and spiders as a food source. *E. coqui* tolerates a higher elevational range, and therefore may invade native rainforest and mesic forests in Hawaii. According to Dr. Fred Kraus, Alien Species Coordinator with the Hawaii Department of Land and Natural Resources, Forestry and Wildlife Division, currently none of the sites infested with *Eleutherodactylus* are habitats for endangered species. However, there is a potential for the frogs to enter these habitats, particularly near the Hawaii Volcanoes National Park, where the nearest infested area is about 2 miles away. Another concern is that increase in populations of these frog species will provide a food source for, and enhance, the already large populations of introduced predators, such as rats and mongooses. In turn, this would further increase predation pressure on native birds, a dynamic which has been demonstrated elsewhere

and suspected to occur for other species in Hawaii.

The Applicant proposes to make up to 12 applications per acre per year of 100 - 200 pounds of product (99 - 198 pounds of caffeine) in 1,200 gallons of water per acre. However, a maximum of only 1,200 pounds of product (1,188 pounds caffeine) will be applied per acre per year. The projected acreage for 2002–2003 is 200 acres of floriculture and nursery crops, parks, hotels and resort areas, and forest habitats throughout the state of Hawaii. Therefore, a maximum of 240,000 pounds caffeine could be applied.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by EPA. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the quarantine exemption requested by the USDA, APHIS.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 20, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–24489 Filed 9–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0038; FRL–7188–1]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Illinois Authorization of Lead-Based Paint Activities Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; final approval of the Illinois TSCA Section 402/404 Lead-Based Paint Accreditation and Certification Program.

SUMMARY: On October 12, 2001, the State of Illinois, through the Illinois Department of Public Health (IDPH), submitted an application for EPA final approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the approval of Illinois' application, and the authorization of the Illinois Department of Public Health's lead-based paint program to apply in the State of Illinois effective April 11, 2002, in lieu of the Federal program under section 402 of TSCA.

DATES: Lead-based paint activities program authorization was granted to the State of Illinois effective April 11, 2002.

FOR FURTHER INFORMATION CONTACT: By mail: Larisa Leonova, State of Illinois Project Officer, Pesticides and Toxics Branch, (DT-8J), Environmental Protection Agency, Region V, 77 West Jackson Blvd., Chicago, IL 60604; telephone: (312) 353–5838; e-mail address: leonova.larisa@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to firms and individuals engaged in lead-based paint activities in Illinois. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this **Federal Register** notice document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket ID number OPPT–2002–0038. The official record consists of the documents specifically referenced in this action, this notice, the State of Illinois' authorization application, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA Region V Office, Waste, Pesticides and Toxics Division, Pesticides and Toxics Branch, Toxics Program Section, (DT-8J), 77 West Jackson Blvd., Chicago, IL 60604.

II. Background

A. What Action is the Agency Taking?

EPA issued correspondence to the Illinois Department of Public Health dated May 6, 1999, which granted a 3–year interim approval of the Illinois Lead Poisoning Prevention Program. The interim approval authorized the Department to enforce the Illinois Lead Poisoning Prevention Act (LPPA), 410 ILCS 45, and Lead Poisoning Prevention Code (LPPC), 77 Ill Adm. Code 845, in lieu of the Federal program. The effective date of the interim approval was April 16, 1999 (published by EPA in the **Federal Register** of February 29, 2000 (65 FR 10787) (FRL–6399–4). As a condition of the interim approval, the Department was required to submit a request for full (final) approval of the Illinois Program at least 180 days prior to the expiration of the 3–year interim approval.

Illinois applied for final approval and authorization to enforce its Lead Poisoning Prevention Program on October 12, 2001. The Department provided amended copies of the LPPA, LPPC, and the program policies that govern the administration of the program. Copies of the correspondence from the Illinois Attorney General's office indicating the inapplicability of the Illinois Environmental Audit Privilege Law to the Illinois LPPA and EPA's response accepting the opinion offered by the Illinois Attorney General's office were also included with this application. These materials resolved the only remaining issue dealing with the applicability of the Illinois Environmental Audit Privilege Law to the enforcement of the LPPA and

LPPC and removed the legal barriers for final EPA approval.

Notice of Illinois' application, a solicitation for public comment regarding the application, and background information supporting the application was published in the **Federal Register** of January 11, 2002 (67 FR 1465) (FRL–6815–5). As determined by EPA's review and assessment, Illinois' application successfully demonstrated that the State's Lead-Based Paint Activities Program achieved the protectiveness and enforcement criteria, as required for Federal authorization. Furthermore, no public comments were received regarding any aspect of the Illinois program and/or application.

B. What is the Agency's Authority for Taking this Action?

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–2692), titled ''Lead Exposure Reduction.''

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 of TSCA, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities. Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA (15 U.S.C. 2684 (h)), EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

III. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Withdrawal of Authorization

Pursuant to TSCA section 404(c), the Administrator may withdraw a State or Tribal lead-based paint activities program authorization, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this document in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: August 27, 2002.

Bharat Mathur,

Acting Regional Administrator, Region V.

[FR Doc. 02–24649 Filed 9–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7384–8]

Notice of Availability of Draft National Pollution Discharge Elimination Systems (NPDES) General Permit for Storm Water Discharges From Small Municipal Separate Storm Sewer Systems in the States of Massachusetts and New Hampshire and Indian Lands in the States of Connecticut, Massachusetts, and Rhode Island and Federal Facilities in Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the draft NPDES general permits MAR040000; NHR040000; MAR04000I; CTR04000I; RIR04000I and VTR04000F.

SUMMARY: The Director of the Office of Ecosystem Protection, Environmental Protection Agency-Region 1, is today providing notice of the availability of the Draft National Pollutant Discharge Elimination System (NPDES) general permit for storm water discharges from small municipal separate storm sewer systems (MS4s) to certain waters of the States of Massachusetts, New Hampshire and Vermont, and to certain waters on Indian Country lands in the States of Connecticut, Massachusetts, and Rhode Island. This draft NPDES general permit establishes Notice of Intent (NOI) requirements, standards, prohibitions, and management practices for discharges of storm water from municipal separate storm sewer systems.

Owners and/or operators of small MS4s that discharge storm water will be required to submit an NOI to EPA-Region 1 to be covered by the general permit and will receive a written notification from EPA-Region 1 of permit coverage and authorization to discharge under the general permit. This general permit does not cover new sources as defined at 40 CFR 122.2.

DATES: The public comment period is from September 27, 2002, to November 1, 2002. Interested parties may submit comments on the draft general permit as part of the administrative record to EPA-Region 1 at the address above, no later than November 8, 2002. The general permit shall be effective on the date specified in the final general permit published in the **Federal Register** and will expire five years from the publication date of final permit.

Comment must be received or postmarked by midnight November 8, 2002. No facsimiles (faxes) will be accepted.

ADDRESSES: The draft permit is based on an administrative record available for public review at EPA-Region 1, Office of Ecosystem Protection (CMU), 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. Copies of information in the record are available upon request. A reasonable fee may be charged for copying.

Public Meeting Information: EPA—Region 1 will hold four public meetings to provide information about the general permit and its requirements. The public meetings will include a presentation on the draft permit and a question and answer session. Written, but not oral, comments for the official permit record will be accepted at the public meetings. The meetings will be at the following locations:

Wednesday—October 16, 2002: Worcester Public Library—Main Branch, Saxe Room, Library Lane/ Salem Square, Worcester, MA 01608. 9:30 a.m.–12:30 p.m.

Tuesday—October 22, 2002: Town of Middleborough, Town Hall, 10 Nickerson Avenue, Middleborough, MA. 1 p.m.–4 p.m.

Thursday—October 24, 2002: Town of Springfield/Municipal Office Bldg., 2nd Floor Conference Room, 26 Central Street, West Springfield, MA 01089. 1 p.m.–4 p.m.

Thursday—October 31, 2002: Portsmouth City Council Chambers, Portsmouth City Hall, One Junkins Avenue, Portsmouth, NH 03801. 9 a.m.–12:00 p.m.

Public Hearing Information: A public hearing will be conducted in accordance with 40 CFR 124.12 and will provide interested parties with the opportunity to provide written and/or oral comments for the official record. Only questions regarding procedures will be addressed at the hearing. The hearing may close prior to 12:00 if all parties wishing to present comments have done so.

Wednesday—October 30, 2002: United States Environmental Protection Agency, Regional Laboratory, 11 Technology Drive, North Chelmsford, MA 01863. Kennebec Conference Rooms A & B, 9 a.m.–12 p.m.

The hearing is being held in a government facility. Visitors will be asked to sign in and present photo identification. People planning on attending the public hearing may register prior to the hearing date. To register, contact Olga Vergara at 617/ 918–1519 or via e-mail at *vergara.olga@epa.gov,* include ''Public Hearing Registration'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft permit may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday excluding holidays from: Thelma Murphy, Office of Ecosystem Protection, Environmental Protection Agency, 1 Congress Street, Suite 1100, Boston, MA 02114–2023; telephone: 617–918–1615; e-mail: *murphy.thelma@epa.gov.*

SUPPLEMENTARY INFORMATION: The draft general permit may be viewed over the Internet via the EPA-Region 1 Web site *www.epa.gov/region01/topics/water/ permits.html.* To obtain a hard copy of the document, please contact Thelma Murphy. Contact information is provided above. The draft general permit includes a fact sheet which set forth principal facts and the significant factual, legal, and policy questions considered in the development of the draft permit. A reasonable fee may be charged for copying requests.

When the general permit is issued, it will be published in its entirety in the **Federal Register**. The general permit will be effective on the date specified in the **Federal Register** and it will expire five years from the date that the final permit is published in the **Federal Register**.

Dated: September 19, 2002.

Robert W. Varney,

Regional Administrator, , Region 1.

[FR Doc. 02–24644 Filed 9–26–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–2283]

Wireless Telecommunications Bureau Seeks Comment on Request for Postponement of 1670–1675 MHz Band Auction; Auction No. 46

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on a request for postponement of Auction No. 46 to allow telecommunications companies to raise the capital necessary to participate in the auction.

DATES: Comments are due on or before September 20, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Francis Gutierrez of the Legal Branch of the Auctions and Industry Analysis Division of the Wireless Telecommunications Bureau at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released by the Wireless Telecommunications Bureau on September 13, 2002. The complete text of the Public Notice is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The September 13, 2002 Public Notice may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

1. On October 30, 2002, the Federal Communications Commission is scheduled to hold an auction of one license in the 1670–1675 MHz band (Auction No. 46). The deadline for submission of short-form applications (FCC Form 175) to bid in Auction No. 46 is currently October 1, 2002 at 6 p.m. ET.

2. In a letter to the Wireless Telecommunications Bureau dated September 13, 2002, ArrayComm, Inc. (ArrayComm) requests a six-month postponement of Auction No. 46. ArrayComm contends that a postponement is needed because circumstances in the financial markets have made it difficult for telecommunications companies to raise the capital necessary to participate in the auction. ArrayComm asserts that a postponement of Auction No. 46 until April 30, 2003, will enable many companies that seek to compete for the 1670–1675 MHz license to alleviate their capital shortage prior to the auction, thereby ensuring maximum participation in the auction.

3. Because of the impending October 1, 2002 deadline for the submission of short-form applications, the Bureau seeks comment on ArrayComm's request on an expedited basis. Interested parties may file comments on or before September 20, 2002.

4. All comments should reference ArrayComm's request for postponement and include DA 02–2283. Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554. The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

5. Comments should also be sent by electronic mail to the following address: *auction46@fcc.gov.* The electronic mail containing the comments must include a subject or caption referring to Auction No. 46 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Comments should also be sent to the Commission's duplicating contractor, Qualex International (Qualex), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, by facsimile (202) 863–2898, or via e-mail at *qualexint@aol.com.*

6. Copies of comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. Copies may also be obtained from Qualex.

7. The ArrayComm waiver request is available for public inspection and copying in the Reference Center, Room CY A257, 445 12th St., SW., Washington, DC 20554. Copies of the waiver request are also available from Qualex.

8. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200(a) and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations 1 must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions & Industry Analysis Division, Wireless Telecommunications Commission.

[FR Doc. 02–24592 Filed 9–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–46–D; DA 02–2305]

Wireless Telecommunications Bureau Announces Revised Pre-Auction Deadlines for the 1670–1675 MHz Band Auction (Auction No. 46)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document revises the pre-auction schedule for Auction No. 46 to give the Bureau time to consider a request for postponement of the auction and any comments filed in response.

DATES: Auction No. 46 is scheduled to begin on October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Francis Gutierrez, Auction and Industry Analysis Division, Legal Branch at (202) 418–0660 or Lisa Stover, Auction and Industry Analysis Division at (717) 338–2888.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released by the Wireless Telecommunications Bureau on September 17, 2002. The complete text of the Public Notice is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The September 17, 2002 Public Notice may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

On September 13, 2002, the Wireless Telecommunications Bureau (''Bureau'') released a public notice seeking comment on ArrayComm, Inc.''s request for postponement of the 1670–1675 MHz band Auction (''Auction No. 46''). Because of the impending September 25, 2002 deadline for the submission of short-form applications, the Bureau sought comment on ArrayComm's request on an expedited basis and directed that comments be filed on or before September 20, 2002.

The Bureau revises the pre-auction schedule for Auction No. 46 to give it time to consider ArrayComm's request and any comments filed in response. The new schedule for Auction No. 46 is as follows:

Short-Form Application (FCC Form 175)

Filing Window Opens
September 25, 2002; 9 a.m. ET
Short-Form Application (FCC Form 175) Deadline
October 1, 2002; 6 p.m. ET
Upfront Payments Deadline
October 15, 2002; 6 p.m. ET
Mock Auction
October 25, 2002
Auction Begins
October 30, 2002

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions & Industry Analysis Division, Wireless Telecommunications Commission.

[FR Doc. 02–24593 Filed 9–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments

must be received not later than October 11, 2002.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. The Albert N. Roberts, and Emma L. Roberts Revocable Trust, Albert N. Roberts, and Emma L. Roberts, Co-trustees, Polson, Montana; to acquire control of Flathead, Lake Bancoporation, Inc., Polson, Montana, and thereby indirectly acquire voting shares of First Citizens Bank of Polson, Polson, Montana.

Board of Governors of the Federal Reserve System, September 23, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–24571 Filed 9–26–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 2002.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Woodforest Financial Group, Inc., The Woodlands, Texas, and Sun Belt Bancshares Corporation, Wilmington, Delaware; to acquire up 37 percent of Main Street National Bank, Cleveland, Texas.

Board of Governors of the Federal Reserve System, September 23, 2002.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 02–24572 Filed 9–26–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02187]

Cooperative Agreement to the Medical and Health Research Association of New York City, Inc.; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for the Medical and Health Research Association of New York City, Inc. This program addresses the ''Healthy People 2010'' focus area of Immunization and Infectious Diseases, specifically objective 14.26, ''Increase the proportion of children who participate in fully operational population-based immunization registries.''

The purpose of the program is to: (1) Forge new, and strengthen existing, partnerships with immunization registry stakeholders; (2) promote the use of immunization registries as a standard practice in the delivery of health services; and (3) educate stakeholders about the use and benefits of immunization registries.

B. Eligible Applicants

Assistance will be provided only to the Medical and Health Research Association of New York City, Inc.(MHRA). No other applications are solicited. MHRA is the only organization that has an established relationship with state and local health department immunization registry developers, and the technical and programmatic expertise necessary to carry out this project. MHRA is a unique organization because its members have technical expertise in the areas of registry partnerships, immunization registry participation by providers and children, registry promotion and education, registry data quality and use, privacy and confidentiality of electronic data, electronic information exchange and integration, and resource development.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

$360,000 is being awarded in FY 2002. It is expected that the award will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For business management assistance, contact: Peaches Brown, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2738, E-mail address: *prb0@cdc.gov.*

For program technical assistance, contact:Karen Fowler, Program Analyst, Systems Development Branch, DMD, National Immunization Program, Mailstop E–62, 1600 Clifton Rd, Atlanta, GA 30333, Telephone number: (404) 639–8295, E-mail address: *kgf1@cdc.gov.*

Dated: September 20, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–24576 Filed 9–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02213]

The National Black Caucus of State Legislators (NBCSL); Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a cooperative agreement program with The National Black Caucus of State Legislators.

The purpose of this cooperative agreement is to:

1. Educate African-American State Legislators, legislative staff, State government employees, and other stakeholders on HIV/AIDS, syphilis and other STD.

2. Provide access to accurate, comprehensive and timely information on HIV/AIDS, syphilis and other STD to African-American State legislators, legislative staff, State government employees, and other stakeholders.

This program addresses the ''Healthy People 2010'' focus areas of HIV, STD and Educational and Community-Based Programs.

B. Eligible Applicant

Assistance is provided only to the NBCSL. No other applications were solicited.

NBCSL is the only nonpartisan organization serving as a national network, and clearinghouse for African-American State legislators from all 50 States. NBCSL is the only organization of African-American State legislators that provides policy research tailored to meet the needs of their constituents, publications, consulting services, and educational and networking forums for African-American State legislators, committees, and their staff using a variety of information technologies and resources. No other organization has this unique role, credibility, and established rapport with African-American State legislators and their staff.

C. Funds

Approximately $150,000 is being awarded in FY 2002. The award will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to three years.

D. Where To Obtain Additional Information

Business management technical assistance may be obtained from: Ann Cole, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2731, E-mail address: *zlr5@cdc.gov.*

For program technical assistance, contact: Dave Brownell, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 404–639–5208, E-mail address: *dfb2@cdc.gov.*

Dated: September 20, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–24577 Filed 9–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02228]

Men Involved in STD Training Empowerment Research Study (MISTERS): A Community-Based STD/HIV Intervention for Men Newly Released From Jail; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a grant program, ''MISTERS, Men Involved in STD Training Empowerment Research Study'' to be performed by STAND, Inc. Persons entering correctional facilities have been shown to have a high prevalence of Sexually Transmitted Diseases (STDs). This is of profound public health importance in the United States. Approximately 5% of the population can be expected to serve a sentence in federal or state prison. Many crimes are in some way associated with drug use, which is, in turn, associated with high-risk sexual behavior. Correctional facilities are not consistent in the use of STD screening among inmates, often relying on inmate self-reporting of symptoms. Even in cases where arrestees are routinely screened, they are often released within 48 hours, too soon for screening results to be available. Since there is a proven association between drug use and high risk sexual behaviors, and a strong likelihood that detainees will be released either without being screened for STDS or too soon for the screening results to be available, there is a significant public health need for post-release services that include a STD prevention intervention that includes early STD screening, treatment and risk-reducing behaviors. The MISTERS project will test the feasibility of such an intervention using a community-based organization, STAND, Inc. STAND is already working with men who have histories of substance use and incarceration.

B. Eligible Applicant

Assistance is provided only to STAND, Inc. STAND's application contained an important and unique scientific proposal that was not submitted in response to any existing program announcement, but does fall under the broad embrace of the Government's public health initiative Human Immunodeficiency Virus (HIV) Prevention. The CDC Division of Sexually Transmitted Disease Prevention (DSTD) performed a thorough review of STAND's proposal and determined that it would significantly advance the state of medical knowledge and provide a unique contribution to the understanding of the effectiveness of post-incarceration behavioral intervention in the reduction of high-risk sexual behavior.

C. Funds

Approximately $500,000 is being awarded in FY 2002. The award will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of one year.

D. Where To Obtain Additional Information

For business management technical assistance, contact: William J. Ryan, Jr., CPCM, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone number: 770–488–2717. E-mail address: *wfr4@cdc.gov*.

For program technical assistance, contact: Samantha Williams, Ph.D., Division of STD Prevention, Centers for Disease Control and Prevention, NCHSTP/DSTD, 10 Corporate Square Blvd, Atlanta, GA 30329. Telephone number 404–639–8620. E-mail address *SWilliams@cdc.gov*.

Dated: September 20, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–24575 Filed 9–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Conceptual Discussions for Full Facepiece Air-Purifying Respirators (APR) Standards and Air-Purifying Escape Respirator Standards Development Efforts for Respiratory Protection Against Chemical, Biological, Radiological and Nuclear (CBRN) Agents

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Conceptual Discussions for full facepiece Air-Purifying Respirators (APR) Standards and Air-Purifying Escape Respirator Standards Development Efforts for Respiratory Protection Against Chemical, Biological, Radiological and Nuclear (CBRN) Agents.

Times and Dates: 1 p.m.–5 p.m., October 16, 2002.

8:30 a.m.–5 p.m., October 17, 2002.

Place: Hilton Garden Inn, 1000 Corporate Drive, Canonsburg, Pennsylvania.

Status: This meeting is hosted by NIOSH. The meeting will be open to the public, limited only by the space available. Interested parties should make hotel reservations directly with the Hilton, referencing the National Personal Protective Technology Laboratory Booking. Interested parties should confirm their attendance by either emailing their intention to attend to *respcert@cdc.gov*, or by contacting NIOSH at (412) 386–4000.

Requests to make presentations at the public meeting should be mailed to the NIOSH Docket Officer, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533–8303, fax (513) 533–8285, or e-mailed to *NIOCINDOCKET@CDC.GOV.* All requests to present should contain the name, address, telephone number, and relevant business affiliations of the presenter, a brief summary of the presentation, and the approximate time requested for the presentation. Oral presentations should be limited to 15 minutes. After reviewing the requests for presentations, NIOSH will notify each presenter of the approximate time that their presentation is scheduled to begin. If a participant is not present when their presentation is scheduled to begin, the remaining participants will be heard in order. At the conclusion of the meeting, an attempt will be made to allow presentations by any scheduled participants who missed their assigned times. Attendees who wish to speak but did not submit a request for the opportunity to make a presentation may be given this opportunity at the conclusion of the meeting, at the discretion of the presiding officer.

Comments on the topics presented in this notice and at the meeting should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513–533–8303, fax 513/533–8285. Comments may also be submitted by e-mail to: *NIOCINDOCKET@CDC.GOV.* e-mail attachments should be formatted as WordPerfect 6/7/8/9, or Microsoft Word. Comments should be submitted to NIOSH no later than November 15, 2002, and should reference docket number, NIOSH–002, in the subject heading.

Purpose: The purpose of the meeting is to continue conceptual discussions for full face piece APR CBRN standards and review research efforts to identify stimulant materials for use as CBRN test surrogates for respirator research and development efforts; and to initiate discussion of concepts being considered for CBRN air-purifying escape respirator standards. NIOSH, along with the U.S. Army Soldier and Biological Chemical Command (SBCCOM) and the National Institute for Standards and Technology (NIST), will present information to attendees concerning the concept development of the APR CBRN standards, as well as concepts being considered for the air-purifying escape respirator CBRN standards. Participants will be given an opportunity to ask questions and to present individual comments for consideration. Interested participants may obtain the latest copies of the APR CBRN and air-purifying escape respirator CBRN concept papers, as well as earlier versions of the concept papers used during the standards development effort, from the NIOSH contact identified below, or from the NIOSH National Personal Protective Technology Laboratory Web site, address: *http://www.cdc.gov/niosh/npptl.* The September 16, 2002, APR CBRN concept paper will be used as the basis for discussion at the public meeting, as well as forming the basis for the new APR CBRN statement of standards.

Recent acts of terrorism have created an urgent awareness of domestic security and preparedness issues. Municipal, states, and federal responder groups, particularly those in locations considered potential targets, have been developing and modifying response and consequence management plans. Since the World Trade Center and anthrax incidents, most emergency response agencies have operated with a heightened appreciation of the potential scope and sustained resources requirements for coping with such events. The Federal Interagency Board for Equipment Standardization and Interoperability (IAB) has worked to identify personal protective equipment that is already available on the market for responders' use. The IAB has identified the development of standards or guidelines for respiratory protection equipment as a top priority. NIOSH, NIST, the National Fire Protection Association and the Occupational Safety and Health Administration have entered into a Memorandum of Understanding defining each agency or organization's role in developing, establishing, and enforcing standards or guidelines for responders' respiratory protective devices. NIST has initiated Interagency Agreements with NIOSH and SBCCOM to aid in the development of appropriate protection standards or guidelines. NIOSH has the lead in developing standards or guidelines to test, evaluate and approve respirators.

NIOSH, SBCCOM, and NIST have hosted public meetings on June 18 and 19, 2002, and April 17 and 18, 2001, presenting their progress in assessing respiratory protection needs of responders to CBRN incidents. The methods or models for developing hazard and exposure estimates, and the status in evaluating test methods and performance standards that may be applicable as future CBRN respirator standards or guidelines were discussed at these meetings. On December 28, 2001, NIOSH announced standards for the evaluation and approval of self-contained breathing apparatus to protect emergency responders against CBRN agents. NIOSH, SBCCOM, and NIST are in the process of developing CBRN respiratory protection standards and guidelines for full facepiece APR and air-purifying escape respirators, as well as other classes of respirators. The October 16 and 17, 2002, public meeting will continue conceptual discussions for the CBRN APR, as well as introduce concepts being considered for the CBRN air-purifying escape respirators.

Contact Persons for Additional Information: Mr. Jonathan Szalajda, NIOSH, PO Box 18070, 626 Cochrans Mill Road, Pittsburgh, PA 15236, telephone (412) 386–6627, fax (412) 386–6747 and/or e-mail: *respcert@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 23, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–24578 Filed 9–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Smoking and Health Interagency Committee; Correction

ACTION: Notice; correction.

The Interagency Committee on Smoking and Health scheduled meeting for September 30, 2002, has been rescheduled for November 6, 2002.

Name: Interagency Committee on Smoking and Health.

Date and Time: 9 a.m.–4 p.m., November 6, 2002.

Place: Room 615F, Hubert H. Humphrey Building, 200 Independence Avenue, SW, 6th Floor, Washington, DC 20201.

In the **Federal Register** of September 16, 2002, Volume 67, Number 179, Notices, Pages 58428–58429 Interagency Committee on Smoking and Health scheduled meeting for September 30, 2002, has been rescheduled for November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Monica L. Swann, Committee Management Specialist, Interagency Committee on Smoking and Health, Office on Smoking and Health, NCCDPHP, CDC, 200 Independence Avenue, SW, Room 317B, Washington, DC 20201, telephone (202) 205–8500.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 24, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 02–24706 Filed 9–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Diseases Transmitted Through the Food Supply

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of annual update of list of infectious and communicable diseases that are transmitted through handling the food supply and the methods by which such diseases are transmitted.

SUMMARY: Section 103(d) of the Americans with Disabilities Act of 1990, Public Law 101–336, requires the Secretary to publish a list of infectious and communicable diseases that are transmitted through handling the food supply and to review and update the list annually. The Centers for Disease Control and Prevention (CDC) published a final list on August 16, 1991 (56 FR 40897) and updates on September 8, 1992 (57 FR 40917); January 13, 1994 (59 FR 1949); August 15, 1996 (61 FR 42426); September 22, 1997 (62 FR 49518–9); September 15, 1998 (63 FR 49359), September 21, 1999 (64 FR 51127); September 27, 2000 (65 FR 58088) and September 10, 2001 (66 FR 47030). The final list has been reviewed in light of new information and has been revised as set forth below.

EFFECTIVE DATE: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Art Liang, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop G–24, Atlanta, Georgia 30333, telephone (404) 639–2213.

SUPPLEMENTARY INFORMATION: Section 103(d) of the Americans with Disabilities Act of 1990, 42 U.S.C. 12113(d), requires the Secretary of Health and Human Services to:

1. Review all infectious and communicable diseases which may be transmitted through handling the food supply;

2. Publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

3. Publish the methods by which such diseases are transmitted; and,

4. Widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Additionally, the list is to be updated annually.

Since the last publication of the list on September 10, 2001(66 FR 47030), new information has been reviewed. Caliciviruses (Norwalk and Norwalk-like viruses), previously listed in Part I, are now identified as Norwalk and Norwalk-like viruses so as to avoid any confusion with animal caliciviruses which have not been demonstrated to cause foodborne illness in humans.

I. Pathogens Often Transmitted by Food Contaminated by Infected Persons Who Handle Food, and Modes of Transmission of Such Pathogens

The contamination of raw ingredients from infected food-producing animals and cross-contamination during processing are more prevalent causes of foodborne disease than is contamination of foods by persons with infectious or contagious diseases. However, some pathogens are frequently transmitted by food contaminated by infected persons. The presence of any one of the following signs or symptoms in persons who handle food may indicate infection by a pathogen that could be transmitted to others through handling the food supply: Diarrhea, vomiting, open skin sores, boils, fever, dark urine, or jaundice. The failure of food-handlers to wash hands (in situations such as after using the toilet, handling raw meat, cleaning spills, or carrying garbage, for example), wear clean gloves, or use clean utensils is responsible for the foodborne transmission of these pathogens. Non-foodborne routes of transmission, such as from one person to another, are also major contributors in the spread of these pathogens. Pathogens that can cause diseases after an infected person handles food are the following: Norwalk and Norwalk-like viruses, Hepatitis A virus, *Salmonella typhi, Shigella* species, *Staphylococcus aureus, Streptococcus pyogenes.*

II. Pathogens Occasionally Transmitted by Food Contaminated by Infected Persons Who Handle Food, But Usually Transmitted by Contamination at the Source or in Food Processing or by Non-foodborne Routes

Other pathogens are occasionally transmitted by infected persons who handle food, but usually cause disease when food is intrinsically contaminated or cross-contaminated during processing or preparation. Bacterial pathogens in this category often require a period of temperature abuse to permit their multiplication to an infectious dose before they will cause disease in consumers. Preventing food contact by persons who have an acute diarrheal illness will decrease the risk of transmitting the following pathogens: *Campylobacter jejuni, Cryptosporidium parvum, Entamoeba histolytica,* Enterohemorrhagic *Escherichia coli,* Enterotoxigenic *Escherichia coli, Giardia lamblia,* Nontyphoidal *Salmonella, Taenia solium, Vibrio cholerae* 01, *Yersinia enterocolitica.*

References

1. World Health Organization. Health surveillance and management procedures for food-handling personnel: report of a WHO consultation. World Health Organization technical report series; 785. Geneva: World Health Organization, 1989.

2. Frank JF, Barnhart HM. Food and dairy sanitation. In: Last JM, ed. Maxcy-Rosenau public health and preventive medicine, 12th edition. New York Appleton-Century-Crofts, 1986:765–806.

3. Bennett JV, Holmberg SD, Rogers MF, Solomon SL. Infectious and parasitic diseases. In: Amler RW, Dull HB, eds. Closing the gap: the burden of unnecessary illness. New York: Oxford University Press, 1987:102–114.

4. Centers for Disease Control and Prevention. Locally acquired neurocysticercosis—North Carolina,

Massachusetts, and South Carolina, 1989–1991. MMWR 1992; 41:1–4.

5. Centers for Disease Control and Prevention. Foodborne Outbreak of Cryptosporidiosis-Spokane, Washington, 1997. MMWR 1998; 47:27.

Dated: September 23, 2002.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–24579 Filed 9–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Vaccine Information Materials for Pneumococcal Conjugate, Diphtheria, Tetanus, acellular Pertussis and Hepatitis B Vaccines

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: Under the National Childhood Vaccine Injury Act (42 U.S.C. 300aa–26), the CDC must develop vaccine information materials that all health care providers are required to give to patients/parents prior to administration of specific vaccines. On March 6, 2001, CDC published a notice in the **Federal Register** (66 FR 13540) seeking public comments on proposed new vaccine information materials for pneumococcal conjugate vaccine, and revised vaccine information materials for diphtheria, tetanus, acellular pertussis (DTaP/DT) vaccines and hepatitis B vaccine. Following review of the comments submitted and consultation as required under the law, CDC has finalized these vaccine information materials. The final materials are contained in this notice.

DATES: Beginning no later than December 15, 2002, each health care provider who administers any vaccine that contains pneumococcal conjugate vaccine shall, prior to administration of each dose, provide a copy of the pneumococcal conjugate vaccine information materials contained in this notice to the parent or legal representative of any child to whom such provider intends to administer the vaccine.

Beginning as soon as practicable, each health care provider who administers any vaccine that contains diphtheria, tetanus, acellular pertussis or hepatitis B vaccine shall, prior to administration of each dose of the vaccine, provide a copy of the relevant vaccine information materials contained in this notice to the parent or legal representative of any child to whom such provider intends to administer the vaccine and to any adult to whom such provider intends to administer hepatitis B vaccine, in lieu of providing earlier versions of these materials.

FOR FURTHER INFORMATION CONTACT: Walter A. Orenstein, M.D., Director, National Immunization Program, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–8200.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. 300aa–26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by all health care providers in the United States to any patient (or to the parent or legal representative in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program.

Development and revision of the vaccine information materials have been delegated by the Secretary to the Centers for Disease Control and Prevention (CDC). Section 2126 requires that the materials be developed, or revised, after notice to the public, with a 60-day comment period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration. The law also requires that the information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

The vaccines initially covered under the National Vaccine Injury Compensation Program were diphtheria, tetanus, pertussis, measles, mumps, rubella, and poliomyelitis vaccines. Since April 15, 1992, any health care provider in the United States who intends to administer one of these covered vaccines is required to provide copies of the relevant vaccine information materials, also known as Vaccine Information Statements (VIS), prior to administration of any of these vaccines. Since June 1, 1999, health care providers are also required to provide copies of vaccine information materials for the following vaccines that were added to the National Vaccine Injury Compensation Program: hepatitis B, haemophilus influenzae type b (Hib), and varicella (chickenpox) vaccines.

Pneumococcal Conjugate Vaccine Information Materials

Following the addition of pneumococcal conjugate vaccine to the National Vaccine Injury Compensation Program, CDC, as required under 42 U.S.C. 300aa–26, proposed vaccine information materials covering that vaccine which were published in a **Federal Register** notice on March 6, 2001 (66 FR 13540). With publication of this notice, as of December 15, 2002, health care providers will also be required to provide copies of pneumococcal conjugate vaccine information materials

Revised Vaccine Information Materials for Diphtheria, Tetanus, acellular Pertussis (DTaP/DT) Vaccines and Hepatitis B Vaccine

Proposed revised vaccine information materials for diphtheria, tetanus, acellular pertussis (DTaP/DT) vaccines and hepatitis B vaccine were also published in the March 6, 2001 **Federal Register** notice.

New/Revised Vaccine Information Materials

The new/revised vaccine information materials were drafted in consultation with the Advisory Commission on Childhood Vaccines, the Food and Drug Administration, the American Academy of Pediatrics, American Pharmaceutical Association, Association of American Indian Physicians, Every Child by Two, Immunization Action Coalition, Immunization, Education and Action Committee, Infectious Diseases Society of America, National Association for Pediatric Nurse Associates and Practitioners and the National Vaccine Advisory Committee. Also, CDC provided copies of the draft materials to other organizations and sought their consultation; however, those organizations did not provide comments.

Following consultation and review of comments submitted, these vaccine information materials have been finalized and are contained in this notice. They are entitled ''Pneumococcal Conjugate Vaccine: What You Need to Know,'' ''Diphtheria,

Tetanus & Pertussis Vaccines: What You Need to Know,'' and ''Hepatitis B Vaccine: What You Need to Know.'' CDC has also revised the Instructions for the Use of Vaccine Information Statements.

Instructions for use of the vaccine information materials and copies of the materials can be found on the CDC website at: *http://www.cdc.gov/nip/publications/VIS/.* In addition, single camera-ready copies are available from State health departments. A list of State health department contacts for obtaining copies of these materials is included in a December 17, 1999 **Federal Register** notice (64 FR 70914).

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Pneumococcal Conjugate Vaccine: What You Need to Know

1. Why get vaccinated?

Infection with *Streptococcus pneumoniae* bacteria can cause serious illness and death. Invasive pneumococcal disease is responsible for about 200 deaths each year among children under 5 years old. It is the leading cause of bacterial meningitis in the United States. (Meningitis is an infection of the covering of the brain).

Each year pneumococcal infection causes severe disease in children under five years old. Before a vaccine was available, pneumococcal infection each year caused:

- Over 700 cases of meningitis
- 13,000 blood infections, and
- About 5 million ear infections

It can also lead to other health problems, including:

- Pneumonia,
- Deafness,
- Brain damage.

Children under 2 years old are at highest risk for serious disease. Pneumococcus bacteria are spread from person to person through close contact.

Pneumococcal infections can be hard to treat because the bacteria have become resistant to some of the drugs that have been used to treat them. This makes prevention of pneumococcal infections even more important. Pneumococcal conjugate vaccine can help prevent serious pneumococcal disease, such as meningitis and blood infections. It can also prevent some ear infections. But ear infections have many causes, and pneumococcal vaccine is effective against only some of them.

2. Pneumococcal conjugate vaccine

Pneumococcal conjugate vaccine is approved for infants and toddlers. Children who are vaccinated when they are infants will be protected when they are at greatest risk for serious disease.

Some older children and adults may get a different vaccine called pneumococcal polysaccharide vaccine. There is a separate Vaccine Information Statement for people getting this vaccine.

3. Who should get the vaccine and when?

- Children under 2 years of age:

—2 months
—4 months
—6 months
—12–15 months

Children who weren't vaccinated at these ages can still get the vaccine. The number of doses needed depends on the child's age. Ask your health care provider for details.

- Children between 2 and 5 years of age:

Pneumococcal conjugate vaccine is also recommended for children between 2 and 5 years old who have not already gotten the vaccine and are at high risk of serious pneumococcal disease.

This includes children who:

—Have sickle cell disease,
—Have a damaged spleen or no spleen,
—Have HIV/AIDS,
—Have other diseases that affect the immune system, such as diabetes, cancer, or liver disease, or who
—Take medications that affect the immune system, such as chemotherapy or steroids, or
—Have chronic heart or lung disease.

The vaccine should be considered for all other children under age 5 years, especially those at higher risk of serious pneumococcal disease. This includes children who:

—Are under 3 years of age,
—Are of Alaska Native, American Indian or African American descent, or
—Attend group day care.

The number of doses needed depends on the child's age. Ask your health care provider for more details.

Pneumococcal conjugate vaccine may be given at the same time as other vaccines.

4. Some children should not get pneumococcal conjugate vaccine or should wait.

Children should not get pneumococcal conjugate vaccine if they had a severe (life-threatening) allergic reaction to a previous dose of this vaccine, or have a severe allergy to a vaccine component. Tell your health-care provider if your child has ever had a severe reaction to any vaccine, or has any severe allergies.

Children with minor illnesses, such as a cold, may be vaccinated. But children who are moderately or severely ill should usually wait until they recover before getting the vaccine.

5. What are the risks from pneumococcal conjugate vaccine?

In studies (nearly 60,000 doses), pneumococcal conjugate vaccine was associated with only mild reactions:

- Up to about 1 infant out of 4 had redness, tenderness, or swelling where the shot was given.
- Up to 1 out of 3 had a fever of over 100.4°F, and up to about 1 in 50 had a higher fever (over 102.2°F).
- Some children also became fussy or drowsy, or had a loss of appetite.

So far, no moderate or severe reactions have been associated with this vaccine. However, a vaccine, like any medicine, could cause serious problems, such as a severe allergic reaction. The risk of this vaccine causing serious harm, or death, is extremely small.

6. What if there is a moderate or severe reaction? What should I look for?

Look for any unusual condition, such as a serious allergic reaction, high fever, or unusual behavior.

Serious allergic reactions are extremely rare with any vaccine. If one were to occur, it would most likely be within a few minutes to a few hours after the shot. Signs can include:

—Difficulty breathing
—Hoarseness or wheezing
—Hives
—Paleness
—Weakness
—A fast heart beat
—Dizziness
—Swelling of the throat

What should I do?

- Call a doctor or get the person to a doctor right away.
- Tell your doctor what happened, the date and time it happened, and when the vaccination was given.
- Ask your health care provider to file a Vaccine Adverse Event Reporting System (VAERS) form. Or call VAERS yourself at 1–800–822–7967, or visit their Web site at *http://www.vaers.org.*

7. The Vaccine Injury Compensation Program

In the rare event that you or your child has a serious reaction to a vaccine, a federal program has been created to help pay for the care of those who have been harmed. For details about the National Vaccine Injury Compensation Program, call 1–800–338–2382 or visit their Web site at *http://www.hrsa.gov/bhpr/vicp.*

8. How can I learn more?

• Ask your health care provider. They can give you the vaccine package insert or suggest other sources of information.

• Call your local or state health department's immunization program.

• Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–2522 (English)
—Call 1–800–232–0233 (Español)
—Visit the National Immunization Program's Web site at *http://www.cdc.gov/nip*

U.S. Department of Health & Human Services, Centers for Disease Control and Prevention, National Immunization Program.

Vaccine Information Statement, Pneumococcal Conjugate Vaccine, (9/30/02), 42 U.S.C. 300aa–26.

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Diphtheria, Tetanus & Pertussis Vaccines: What You Need to Know

1. Why get vaccinated?

Diphtheria, tetanus, and pertussis are serious diseases caused by bacteria. Diphtheria and pertussis are spread from person to person. Tetanus enters the body through cuts or wounds.

Diphtheria causes a thick covering in the back of the throat.

• It can lead to breathing problems, paralysis, heart failure, and even death.

Tetanus (Lockjaw) causes painful tightening of the muscles, usually all over the body.

• It can lead to ''locking'' of the jaw so the victim cannot open his mouth or swallow. Tetanus leads to death in about 3 out of 10 cases.

Pertussis (Whooping Cough) causes coughing spells so bad that it is hard for infants to eat, drink, or breathe. These spells can last for weeks.

• It can lead to pneumonia, seizures (jerking and staring spells), brain damage, and death.

Diphtheria, tetanus, and pertussis vaccine (DTaP) can prevent these diseases. Most children who are vaccinated with DTaP will be protected throughout childhood. Many more children would get these diseases if we stopped vaccinating.

DTaP is a safer version of an older vaccine called DTP. DTP is no longer used in the United States.

2. Who should get DTaP vaccine and when?

Children should get *5 doses* of DTaP vaccine, one dose at each of the following ages:

—2 months
—4 months
—6 months
—15–18 months
—4–6 years

DTaP may be given at the same time as other vaccines.

3. Some children should not get DTaP vaccine or should wait

• Any child who has had a life-threatening allergic reaction after a dose of DTaP should not get any more doses.

• Any child who suffered a brain or nervous system disease within 7 days after a dose of DTaP should not get any more doses.

• Talk with your doctor if your child:

—had a seizure or collapsed after a previous dose of DTaP,
—cried non-stop for 3 hours or more after a previous dose of DTaP,
—had a high fever (over 105oF) after a previous dose of DTaP.

• Children who are moderately or severely ill at the time the shot is scheduled should usually wait until they recover before getting DTaP vaccine.

Ask your health care provider for more information. Children who should not get the pertussis part of the vaccine can get a vaccine called DT, which doesn't contain pertussis.

4. Older children and adults

DTaP should not be given to anyone 7 years of age or older. Pertussis can still strike older children, adolescents, and adults, but the pertussis vaccine is currently licensed only for children under 7.

Adolescents and adults still need protection from tetanus and diphtheria. A booster shot called Td is recommended at 11–12 years of age. It should be repeated every 10 years. There is a separate Vaccine Information Statement for Td vaccine.

5. What are the risks from DTaP vaccine?

Getting diphtheria, tetanus, or pertussis disease is much riskier than getting DTaP vaccine.

However, a vaccine, like any medicine, is capable of causing serious problems, such as severe allergic reactions. The risk of DTaP vaccine causing serious harm, or death, is extremely small.

Mild Problems (Common)

• Fever (up to about 1 child in 4)

• Redness or swelling where the shot was given (up to about 1 child in 4)

• Soreness or tenderness where the shot was given (up to about 1 child in 4)

These problems occur more often after the 4th and 5th doses of the DTaP series than after earlier doses.

Another mild problem is swelling of the arm or leg in which the shot was given, after the 4th or 5th dose (up to about 1 child in 30).

Other mild problems include:

• Fussiness (up to about 1 child in 3)

• Tiredness or poor appetite (up to about 1 child in 10)

• Vomiting (up to about 1 child in 50)

These problems generally occur 1–3 days after the shot.

Moderate Problems (Uncommon)

• Seizure (jerking or staring) (about 1 child out of 14,000)

• Non-stop crying, for 3 hours or more (up to about 1 child out of 1,000)

• High fever, over 1050F (about 1 child out of 16,000)

Severe Problems (Very Rare)

• Serious allergic reaction (less than 1 out of a million doses)

• Several other severe problems have been reported after DTaP vaccine. These include:

—Long-term seizures, coma, or lowered consciousness
—Permanent brain damage.

These are so rare it is hard to tell if they are caused by the vaccine.

Controlling fever is especially important for children who have had seizures, for any reason. It is also important if another family member has had seizures.

You can reduce fever and pain by giving your child an aspirin-free pain reliever when the shot is given, and for the next 24 hours, following the package instructions.

6. What if there is a moderate or severe reaction?

What should I look for?

Any unusual conditions, such as a serious allergic reaction, high fever or behavior changes. Signs of a serious allergic reaction include difficulty breathing, hoarseness or wheezing, hives, paleness, weakness, a fast heart beat or dizziness within a few minutes to a few hours after the shot. If a high fever or seizure occurs, it is usually within 2 weeks after the shot.

What should I do?

• Call a doctor, or get the person to a doctor right away.

• Tell your doctor what happened, the date and time it happened, and when the vaccination was given.

• Ask your doctor, nurse, or health department to file a Vaccine Adverse Event Reporting System (VAERS) form, or call VAERS yourself at 1–800–822–7967.

7. The National Vaccine Injury Compensation Program

In the rare event that you or your child has a serious reaction to a vaccine, a federal program has been created to help pay for the care of those who have been harmed.

For details about the National Vaccine Injury Compensation Program, call 1–800–338–2382 or visit the program's Web site at *http://www.hrsa.gov/bhpr/vicp.*

8. How can I learn more?

- Ask your health care provider. They can give you the vaccine package insert or suggest other sources of information.
- Call your local or state health department's immunization program.
- Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–2522 (English)

—Call 1–800–232–0233 (Español)

—Visit the National Immunization Program's Web site at *http://www.cdc.gov/nip.*

U.S. Department of Health & Human Services, Centers for Disease Control and Prevention, National Immunization Program.

Vaccine Information Statement, DTaP/DT, (7/30/01), 42 U.S.C. 300aa–26.

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Hepatitis B Vaccine: What You Need to Know

1. Why get vaccinated?

Hepatitis B is a serious disease.

The hepatitis B virus can cause short-term (acute) illness that leads to:
- Loss of appetite
- Diarrhea and vomiting
- Tiredness
- Jaundice (yellow skin or eyes)
- Pain in muscles, joints, and stomach

It can also cause long-term (chronic) illness that leads to:
- Liver damage (cirrhosis)
- Liver cancer
- Death

About 1.25 million people in the U.S. have chronic hepatitis B virus infection. If you are infected as a young child, you are much more likely to develop chronic illness.

Each year it is estimated that:
- 200,000 people, mostly young adults, get infected with hepatitis B virus
- More than 11,000 people have to stay in the hospital because of hepatitis B
- 4,000 to 5,000 people die from chronic hepatitis B

Hepatitis B vaccine can prevent hepatitis B. It is the first anti-cancer vaccine because it can prevent a form of liver cancer.

2. How is hepatitis B virus spread?

Hepatitis B virus is spread through contact with the blood and body fluids of an infected person.

A person can get infected in several ways, such as:
- During birth when the virus passes from an infected mother to her baby
- By having sex with an infected person
- By injecting illegal drugs
- By being stuck with a used needle on the job
- By sharing personal items, such as a razor or toothbrush with an infected person

People can get hepatitis B infection without knowing how they got it. About 1/3 of hepatitis B cases in the United States have an unknown source.

3. Who should get hepatitis B vaccine and when?

(1) Everyone 18 years of age and younger

(2) Adults over 18 who are at risk

Adults at risk for hepatitis B infection include people who have more than one sex partner, men who have sex with other men, injection drug users, health care workers, and others who might be exposed to infected blood or body fluids.

If you are not sure whether you are at risk, ask your doctor or nurse.

People should get 3 doses of hepatitis B vaccine according to the following schedule. If you miss a dose or get behind schedule, get the next dose as soon as you can. There is no need to start over.

HEPATITIS B VACCINATION SCHEDULE

	Who?		
	Infant whose mother is infected with hepatitis B virus	Infant whose mother is not infected with hepatitis B virus	Older child, adolescent, or adult
When:			
First Dose	Within 12 hours of birth	Birth–2 months of age	Any time.
Second Dose	1–2 months of age	1–4 months of age (At least 1 month first after dose).	1–2 months after first dose.
Third Dose	6 months of age	6–18 months of age	4–6 months after first dose.

—The second dose must be given at least 1 month after the first dose.
—The third dose must be given at least 2 months after the second dose and at least 4 months after the first.
—The third dose should not be given to infants younger than 6 months of age.

Adolescents 11 to 15 years of age may need only two doses of hepatitis B vaccine, separated by 4–6 months. Ask your health care provider for details.

Hepatitis B vaccine may be given at the same time as other vaccines.

4. Some people should not get hepatitis B vaccine or should wait

People should not get hepatitis B vaccine if they have ever had a life-threatening allergic reaction to baker's yeast (the kind used for making bread) or to a previous dose of hepatitis B vaccine.

People who are moderately or severely ill at the time the shot is scheduled should usually wait until they recover before getting hepatitis B vaccine.

Ask your doctor or nurse for more information.

5. What are the risks from hepatitis B vaccine?

A vaccine, like any medicine, is capable of causing serious problems, such as severe allergic reactions. The risk of a vaccine causing serious harm, or death, is extremely small.

Getting hepatitis B vaccine is much safer than getting hepatitis B disease.

Most people who get hepatitis B vaccine do not have any problems with it.

Mild Problems

- Soreness where the shot was given, lasting a day or two (up to 1 out of 11 children and adolescents, and about 1 out of 4 adults)
- Mild to moderate fever (up to 1 out of 14 children and adolescents and 1 out of 100 adults)

Severe Problems

- Serious allergic reaction (very rare)

6. What if there is a moderate or severe reaction?

What should I look for?

Any unusual condition, such as a serious allergic reaction, high fever or behavior changes. Signs of a serious allergic reaction can include difficulty breathing, hoarseness or wheezing, hives, paleness, weakness, a fast heart beat or dizziness. If such a reaction were to occur, it would be within a few minutes to a few hours after the shot.

What should I do?

- Call a doctor or get the person to a doctor right away.
- Tell your doctor what happened, the date and time it happened, and when the vaccination was given.
- Ask your doctor, nurse, or health department to file a Vaccine Adverse Event Reporting System (VAERS) form, or call VAERS yourself at 1–800–822–7967.

7. The National Vaccine Injury Compensation Program

In the rare event that you or your child has a serious reaction to a vaccine, a federal program has been created to help pay for the care of those who have been harmed.

For details about the National Vaccine Injury Compensation Program, call 1–800–338–2382 or visit the program's Web site at *http://www.hrsa.gov/bhpr/vicp.*

8. How can I learn more?

- Ask your doctor or nurse. They can give you the vaccine package insert or suggest other sources of information.
- Call your local or state health department's immunization program.
- Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–2522 or 1–888–443–7232 (English)
—Call 1–800–232–0233 (Español)
—Visit the National Immunization Program's Web site at *http://www.cdc.gov/nip* or CDC's Hepatitis Branch Web site at *http://www.cdc.gov/ncidod/diseases/hepatitis*

U.S. Department of Health & Human Services, Centers for Disease Control and Prevention, National Immunization Program.

Vaccine Information Statement, Hepatitis B, (7/11/01), 42 U.S.C. 300aa–26.

Dated: September 23, 2002.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–24574 Filed 9–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–10073, CMS–1557, CMS–1500, CMS–1490U, CMS–1490S CMS–1450]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Survey of Rural Medicare Providers Regarding Provider Education Needs; *Form No.:* CMS–10073 (OMB# 0938–NEW); *Use:* The Division of Provider Education and Training, Centers for Medicare and Medicaid Services (CMS), is requesting Office of Management and Budget (OMB) approval to conduct a survey of the provider education needs of rural Medicare providers. CMS has contracted The Lewin Group to develop and field the survey instrument, analyze and synthesize the information collected, and present findings and recommendations to help CMS better understand the provider education needs of rural providers. The study will also provide an assessment of the specific and unique education challenges faced by rural Medicare providers and the success of current education methods in meeting those challenges; *Frequency:* Other: One-time; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 1,832; *Total Annual Responses:* 1,832; *Total Annual Hours:* 608.

(2) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Survey Report Form Clinical Laboratory Improvement Amendments (CLIA) and Supporting Regulations in 42 CFR 493.1–493.2001; *Form No.:* CMS–1557 (OMB# 0938–0544); *Use:* CLIA requires the Department of Health and Human Services (DHHS) to establish certification requirements for any laboratory that performs tests on human specimens, and to certify through the issuance of a certificate that those laboratories meet the requirements established by DHHS. The information collected on this survey form is used in the administrative pursuit of the Congressionally-mandated program with regard to regulation of laboratories participating in CLIA. In order for the State survey agency to report to CMS its findings on facility compliance with the individual standards on which CMS determines compliance, the surveyor completes the Survey Report Form. The Survey Worksheet provides space to document the surveyor's notes; *Frequency:* Biennially; *Affected Public:* Business or other for profit, Not for profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 26,500; *Total Annual Responses:* 13,250; *Total Annual Hours:* 6,625.

(3) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Flexibility in Payment Methods for Hospitals, Nursing Facilities, and Intermediate Care Facilities for the Mentally Retarded and Supporting Regulations in 42 CFR 447.254; *Form No.:* CMS–R–252 (OMB# 0938–0784); *Use:* Section 4711 of BBA 1997 replaced the Boren requirements with Section 1902(a)(13)(A), which requires States to use a public process for determining institutional payment rates and publish proposed and final rates, underlying methodologies and

justifications. Hospital rates must take into account the situation of hospitals that serve a disproportionate number of low-income patients with special needs; *Frequency:* Once; *Affected Public:* State local, or tribal gov't; *Number of Respondents:* 54; *Total Annual Responses:* 108; *Total Annual Hours:* 27.

(4) *Type of Information Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare/Medicaid Health Insurance Common Claim Form, Instructions, and Supporting Regulations: 42 CFR 414.40, 424.32, 424.44; *Form Number:* CMS–1500, CMS–1490U, CMS–1490S (OMB #: 0938–0008); *Use:* This form is a standardized form for use in the Medicare/Medicaid programs to apply for reimbursement for covered services. Many private insurers also use this form. Use of this form reduces cost and administrative burdens associated with professional claims because only one format needs to be used and maintained. CMS does not require exclusive use of this form for Medicaid.; *Frequency:* On occasion; *Affected Public:* State, Local or Tribal Government, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 1,216,702; *Total Annual Responses:* 740,215,135; *Total Annual Hours Requested:* 42,941,276.

(5) *Type of Information Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Uniform Institutional Provider Bill and Supporting Regulations in 42 CFR 424.5; *Form Number:* CMS–1450 (OMB #: 0938–0247); *Use:* This standardized form is used in the Medicare/Medicaid program to apply for reimbursement of covered services by all providers that accept Medicare/Medicaid assigned claims; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 46,708; *Total Annual Responses:* 158,603,290; *Total Annual Hours Requested:* 1,666,208.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 19, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–24586 Filed 9–26–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–137 and CMS–R–257]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Internal Revenue Service/Social Security Administration / Health Care Financing Administration Data Match and Supporting Regulations in 42 CFR 411.20–411.206; *Form No.:* CMS–R–137; *Use:* Employers who are identified through a match of IRS, SSA, and Medicare records will be contacted concerning group health plan coverage of identified individuals to ensure compliance with Medicare Secondary Payer provisions found at 42 U.S.C. 1395y(b). *Frequency:* Annually; *Affected Public:* Federal Government, Business or other for profit, Not for profit institutions, Farms, Federal Government and State, Local or Tribal Government; *Number of Respondents:* 327,947; *Total Annual Responses:* 327,947; *Total Annual Hours Requested:* 1,096,466.

(2) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare + Choice Disenrollment Form to original Medicare; *Form No.:* CMS–R–257 (OMB# 0938–0741); *Use:* Section 4001 of the Balanced Budget Act of 1997 amended the Social Security Act to add section 1851; including 1851(c)(1) which required the establishment of a procedure and form to make and change Medicare + Choice elections, which include disenrollment. In addition, BBA of 1997 also required information be provided to beneficiaries to make better informed choices. Certain information is needed from the beneficiary in order to process the disenrollment action as a change of election; *Frequency:* On occasion; *Affected Public:* Individuals or Households, Business or other for-profit, federal government, not-for-profit institutions; *Number of Respondents:* 50,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 3,300.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the *OMB desk officer:* OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 19, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–24585 Filed 9–26–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4043–N]

RIN 0938–ZA37

Medicare Program; Solicitation for Proposals for the Physician Group Practice Demonstration

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice for solicitation of proposals.

SUMMARY: This notice informs interested parties of an opportunity to apply to participate in the Medicare Physician Group Practice Demonstration. The goal of the demonstration is to encourage coordination of Part A and Part B services; promote efficiency by investment in administrative structures and care processes; and reward physicians for improving health outcomes. A competitive process will be used to select up to six health care groups to participate in the 3-year demonstration.

DATES: Applications will be considered timely if we receive them on or before December 26, 2002.

ADDRESSES: Applications should be mailed to the following address: Department of Health and Human Services, Centers for Medicare & Medicaid Services, Attention: John Pilotte, Project Officer, Center for Beneficiary Choices, DDAG/DDP, Mail Stop: C4–17–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

General Information: Please refer to file code CMS–4043-N on the application. Applications (an unbound original and 2 copies plus an electronic copy) must be typed for clarity and should not exceed 40 double-spaced pages, exclusive of cover letter, the executive summary, resumes, forms, and supporting documentation.

Because of staffing and resource limitations, we cannot accept applications by facsimile (FAX) transmission. Applications postmarked after the closing date, or postmarked on or before the closing date but not received in time for the panel review, will be considered late applications.

Eligible Organizations: Health care groups with at least 200 physician full-time equivalents are eligible to apply. Candidates must meet the criteria outlined in section III.B of this notice.

FOR FURTHER INFORMATION CONTACT: John Pilotte at (410) 786–6558, or by e-mail at *Jpilotte@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Requirements

Section 412 of the Benefits Improvement and Protection Act (BIPA) of 2000 (Pub. L. 106–554) amends title XVIII of the Social Security Act by establishing the Physician Group Practice (PGP) Demonstration.

The PGP demonstration tests a hybrid payment methodology that combines Medicare fee-for-service payments with a bonus pool derived from savings achieved through improvements in the management of patient care and services by physician groups and affiliated organizations.

As defined under BIPA, the goals of the PGP demonstration are to—(1) Encourage coordination of Part A and Part B services; (2) promote efficiency by investment in administrative structures and care processes; and (3) reward physicians for improving health outcomes.

The BIPA mandate along with recent changes in the commercial market create a timely opportunity for us to implement a demonstration giving physician groups incentives for coordinating care, increasing efficiency, and improving processes and outcomes.

B. Issue

The PGP demonstration will enable us to test physician groups' responses to financial incentives for improving care coordination, delivery processes and patient outcomes, and the effect on access, cost, and quality of care to Medicare beneficiaries.

Physicians influence, either directly or indirectly, almost all areas of Medicare spending. For example, physicians deliver services, admit beneficiaries to hospitals, and authorize home health visits. The PGP demonstration seeks to align incentives for physician groups to manage the overall care of its patients. The PGP demonstration encourages health care groups to attract, retain, and coordinate care to beneficiaries; gives physicians incentives to provide services efficiently to their patients; provides a framework in which we can collaborate with providers to the advantage of Medicare beneficiaries; and promotes active use of utilization and clinical data for the purpose of improving efficiency and outcomes.

C. Financial Incentives

Managed care incentive-based payment models evolved as a means to combat rising health care costs, initially focusing on rewarding physicians for financial performance, and have recently focused on incorporating incentives for quality performance.

The Institute of Medicine report entitled, *Crossing the Quality Chasm: A New Health System for the 21st Century* (published by Health Care Services, National Academy Press in 2001), found that quality-related problems can result in waste and lead to inefficiencies, directly conflicting with incentives designed to reduce costs. Therefore, we need a more direct alignment between the compensation method and quality improvement initiatives, especially for individuals with chronic illness who account for a significant portion of Medicare spending.

The PGP demonstration provides the opportunity to identify, test, and evaluate aligning health care providers compensation models with quality improvement goals in the Medicare fee-for-service environment.

II. Physician Group Practice Demonstration

A. Overview

The PGP demonstration will provide a unique reimbursement mechanism through which providers are rewarded for coordinating and managing the overall health care needs of a nonenrolled, fee-for-service patient population. It offers an opportunity to test whether a different financial incentive structure can improve service delivery and quality for Medicare patients, and ultimately prove cost-effective.

The PGP demonstration superimposes new incentives on traditional fee-for-service reimbursement that are more in line with those used by managed care organizations and other commercial payers. In addition, the PGP demonstration includes explicit incentives for process and outcome improvement. Performance on both process and outcome quality indicators, together with cost savings, will be used in the calculation of performance bonuses.

Under the 3-year demonstration, health care groups will continue to be paid under the existing Medicare fee schedules. Health care groups will be able to earn a bonus from a portion of any savings realized relative to their performance target.

Annual performance targets will be calculated for each participating health care group at the end of the performance year, as soon as complete data are available. The target will be derived from a base expenditure amount equal

to the average total payments under Part A and Part B. The performance target is calculated based on services furnished by the health care group on a fee-for-service basis during a base period, adjusted for risk and expected growth rates.

Bonus payments will be allocated between efficiency improvements and documented improvements in processes and outcomes. Bonus payment will be made to a single entity (health care group). The entity is responsible for allocating any bonus payments among affiliated organizations.

Participating health care groups must notify beneficiaries of the incentive arrangement. Medicare balance billing rules continue to apply as well as beneficiary deductibles and coinsurance.

Bonus payments made to demonstration participants must be derived from savings produced by participating organizations. Below, we describe the methodology that will be used to calculate savings and bonuses.

B. Calculating Savings and Bonuses

Under the 3-year demonstration, PGPs and affiliated providers will continue to bill and be paid standard Medicare fee-for-service reimbursement. PGPs will not assume risk for their Part A and Part B payments under the demonstration. PGPs and affiliated providers participating in the demonstration will also be eligible to earn an annual performance bonus.

Bonuses will be paid from a bonus pool derived from Medicare savings generated by the PGP. Medicare savings and bonuses will be calculated after the end of the performance year and as soon as complete data are available. Consequently, bonuses are not likely to be computed and paid until 9 to 12 months after the end of the performance period due to claims lag and operational complexities involving data volume.

PGPs will not receive actual performance targets at the beginning of the performance year. However, PGPs will receive Medicare fee-for-service per-capita expenditures for their market area, in addition to hospital utilization data at the beginning of the performance period, and, thereafter, on an interim basis that they may use to monitor their performance in relation to the market area.

1. Bonus Payment Methodology

The following summarizes the key steps involved in calculating savings to fund financial quality bonuses. The BIPA section 412 refers to incentive and process and outcome improvement bonuses. Throughout this document, we use the term ''quality'' bonus to refer to the process and outcome improvement bonus and ''financial'' to refer to the incentive bonus as outlined in the BIPA.

a. We will identify the immediate market area in which the PGP derives its beneficiaries. The market area will be defined as counties in which 1 percent or more of the beneficiaries assigned to the PGP reside. Only counties from the State in which the PGP is located or in contiguous States for PGPs serving regional populations will be included. The counties will be used to calculate the per-capita Medicare fee-for-service growth rate for the market area that will be used in setting the PGP's performance target.

b. We will use claims data to assign Medicare beneficiaries to the PGP. Beneficiaries who receive at least one evaluation and management (E&M) service from a participating PGP will be eligible for assignment to the PGP. Beneficiaries who receive more E&M services (as measured by Medicare expenditures) from the PGP than from any other physician practice (group or solo) will be assigned to the PGP. For beneficiaries assigned to a PGP in the base year, the base year per-capita expenditures will be calculated.

c. An expenditure target for the performance year will be calculated as follows:

- Target = (Adjusted Base Year Per-Capita Expenditures) × (1 + Expected Growth Rate).

Per-capita expenditures in the base year will be adjusted to account for differences in the case-mix of beneficiaries assigned to the PGP in the performance year. The adjusted base year per-capita expenditures will be updated by the PGP's expected growth rate, that is the growth rate in per-capita expenditures for the PGP's local market area, adjusted for case-mix change.

d. Medicare savings will be computed as the difference between the expenditure target and the PGP's per-capita expenditures in the performance year (for beneficiaries assigned to the PGP in the performance year), multiplied by the number of beneficiaries assigned to the PGP in the performance year. The following is how the calculations will be performed:

- Medicare Savings = (Target—Performance Year Per-Capita Expenditures) x (Assigned Beneficiaries).

e. If a PGP is below its expenditure target, the bonus pool for the PGP is a portion of the savings it generates for Medicare and will be calculated as follows:

- Bonus Pool = (Medicare Savings) x (Sharing Rate).

The sharing rate is equal to 80 percent and represents the proportion of the Medicare savings that funds the PGP's bonus pool. The Medicare Trust Funds will retain the remaining 20 percent.

f. The PGP bonus pool will be allocated between financial performance and quality performance and will be calculated as follows:

- Earned Bonus = (70 percent financial performance + 30 percent maximum quality bonus) x (withhold).

PGPs will receive 70 percent of the bonus pool solely due to financial performance. The remaining 30 percent will be available to the PGP as a quality bonus. The actual quality bonus earned by the PGP equals the maximum quality bonus multiplied by the percentage of quality targets met by the PGP (for example, if the PGP satisfies four of eight quality measures, it will earn 50 percent of the maximum quality bonus). Any amount of the maximum quality bonus that is not earned by the PGP will be additional savings for the Medicare Trust Funds. The earned bonus to the PGP will be subject to an annual 25-percent withhold that the Medicare Trust Funds will reserve to cover losses (for example, PGP actual expenditures > performance target) incurred by the PGP in future years. At the end of the 3-year demonstration, positive balances in the withhold account will be payable to the PGP.

2. Bonus Payment Example

The following example illustrates how savings will be calculated and bonuses awarded. The actual amounts will vary with performance. The example assumes expenditure growth rates of 3 percent for the beneficiaries assigned to the PGP and 8 percent for the local market (5-percent savings by the PGP); 30,000 assigned Medicare fee-for-service beneficiaries; an 80 percent sharing rate; a 25-percent withholding rate; and half (four of eight) of the quality targets are met.

TABLE 1.—EXAMPLE OF A BONUS CALCULATION

Bonus calculation process	Bonus award
Target Per-Capita Expenditures	$7,020
PGP Site Per-Capita Expenditures	6,695
Medicare Savings Per-Capita Expenditures	325
Total Medicare Savings	9,750,000
Medicare Trust Funds Savings	1,950,000
Bonus Pool	7,800,000

TABLE 1.—EXAMPLE OF A BONUS CALCULATION—Continued

Bonus calculation process	Bonus award
Total Bonus	6,630,000
Financial Performance	5,460,000
Quality Performance	1,170,000
Withhold	1,657,500
Earned Bonus	4,972,500

In Table 1, the total annual Medicare program savings is $9,750,000 or per-capita savings of $325 multiplied by the total number of beneficiaries (30,000) assigned to the PGP. The Medicare Trust Funds will retain 20 percent of the total savings, which is equal to $1,950,000. The remaining 80 percent of Medicare savings is available through the bonus pool. The bonus for financial performance is equal to 70 percent of the bonus pool or $5,460,000. The remaining 30 percent of the bonus pool or $2,340,000 is available to the PGP based on its performance on the quality measures. In this example, the PGP satisfies only four of the eight quality measures and earns only $1,170,000 or half of the $2,340,000 available for quality performance.

The total bonus for the PGP is $6,630,000 consisting of $5,460,000 for financial performance and $1,170,000 for quality performance. The total bonus is subject to a 25-percent withhold or $1,657,500 to offset any future losses. The bonus earned (and payable) to the PGP for the performance year is $4,972,500, which is equal to the total bonus minus the withhold.

3. Bonus Payments

PGPs will have up to 3 years to generate savings and earn a bonus. After 3 years, performance targets will be rebased if the demonstration continues. Bonuses may be earned by participating PGPs in performance years in which the organization has generated Medicare savings. Losses in performance years in which there are no Medicare savings accrue to PGPs and bonuses will be reduced in subsequent years to cover any losses.

The maximum bonus that can be earned by a PGP in a year (bonus payments plus withhold amount) is limited to 15 percent of target Medicare expenditures for beneficiaries assigned to that organization in that year. If a participating PGP withdraws from the demonstration before the end of the 3-year period, it is required to remit to us the full amount of any demonstration bonus payments it has received.

4. Interim Utilization Performance Reporting

We plan to provide interim utilization performance reports for participating PGPs. The report will give participating PGPs timely feedback about their performance. Due to data availability and processing lags, reconciliation of the PGPs' financial performance in relation to their target for the year will not occur until 9 to 12 months following the end of the performance year.

5. Demonstration Milestone

The following table illustrates how we intend to provide the interim utilization performance reports and award bonus payments to PGPs under the demonstration. Bonus payments will not be made until 9 to 12 months after the end of the performance year, due to data lags and processing issues. However, we will provide PGPs' with interim performance reports including key utilization indicators as close to the end of the performance year as possible.

TABLE 2.—BONUS PAYMENT AND REPORTING MILESTONES

	Base year	Performance year 1	Performance year 2	Performance year 3	Post demonstration year
Performance Report	►	▼	▼	▼	
Bonus Payment			▲	▲	▲

► = Demonstration starts.
▼ = Interim utilization performance reports.
▲ = Bonus payment.

C. Demonstration Design Summary

The PGP demonstration presents numerous operational challenges for us. The following discusses several key issues with the payment methodology and how we plan to adjust for them in implementing the demonstration. For more information on the payment methodology, go to our website at *http://www.cms.hhs.gov/healthplans/research* and select the ''Physician Group Practice Demonstration.''

1. Assigning Beneficiaries to PGPs

A PGP's ability to coordinate and manage the health care of a beneficiary depends on the types of services the PGP provides to the beneficiary, and the overall control the PGP has over the beneficiary's utilization of services. Since the PGP demonstration is a fee-for-service innovation, there is no enrollment process whereby beneficiaries accept or reject involvement. Therefore, beneficiaries need to be assigned to PGPs based on utilization of Medicare-covered services.

A beneficiary who receives at least one E&M service from a participating PGP is eligible for assignment to the PGP. If the beneficiary receives more E&M service (as measured by Medicare expenditures) from the PGP than from any other physician practice (group or solo), then the beneficiary is assigned to the PGP.

Therefore a beneficiary is assigned to no more than one PGP under the demonstration. This prevents us from paying bonuses more than once when multiple PGPs serve overlapping Medicare patient populations. Since many chronically ill beneficiaries receive their primary care from specialists rather than primary care physicians, E&M services provided by any physician are used for assignment.

2. Base Expenditure Amount

BIPA requires that the PGP demonstration include ''a base expenditure amount, equal to the average total payments under Parts A and B for patients served by the health care group on a fee-for-service basis in a base period determined by the Secretary.'' All Part A and Part B Medicare claims will be used to calculate the base expenditure amount, the performance target, and the physician group's actual experience. The base expenditure amount will be derived from all Part A and Part B Medicare claims from the 12-month period preceding the performance period.

All Medicare expenditures are the most comprehensive basis for the PGP base expenditure amounts, and this basis is consistent with the BIPA requirement. Since the goal of the PGP demonstration is to encourage

coordination of Part A and B services, promote efficiency, and reward physicians for improving health outcomes, setting a comprehensive target gives the PGP more flexibility to focus on the largest sources of inefficiency.

3. Comparison Population

The comparison population for a participating PGP consists of fee-for-service Medicare beneficiaries residing in the PGP's local market area that are not assigned to the PGP. The PGP's market area will consist of all counties in which the group derives at least 1 percent of its Medicare beneficiaries. These counties will be combined to form the market area for the group. We will use claims and beneficiary enrollment data to identify the county of residence of all beneficiaries treated by the group.

The market area is defined for both base and performance years, and may differ between the 2 years to reflect changes in the PGP's service area. The PGP's expected expenditure growth rate is the change in market area per-capita expenditures from the base to the performance year. Market area per-capita expenditures is defined as weighted average county per-capita expenditures of market area counties. The weights are the share of participating PGP beneficiaries residing in each market area county.

4. Sharing Rate

The sharing rate is the maximum proportion of the Medicare savings generated by a PGP that can be paid to the PGP as a bonus. The sharing rate needs to be high enough to give PGPs sufficient incentive to participate in the demonstration, but low enough so that the Medicare program shares significantly in any savings.

The sharing rate will be set at 80 percent for all participating PGPs. With this sharing rate, the PGP may earn up to 80 percent of the Medicare savings it generates depending on its performance with regard to the quality of care targets. The remaining 20 percent will accrue to the Medicare Trust Funds.

5. Health Status Case-Mix Adjustment

To make comparisons between participating PGP and comparison group expenditure growth rates, health status case-mix needs to be held constant. The per-capita expenditures of both participating PGPs and their comparison groups are adjusted for case-mix using the concurrent Diagnostic Cost Groups, Hierarchical Condition Categories (DCG–HCC) model. This model uses diagnoses on Medicare claims (for example, inpatient, outpatient, and physician) to predict the expected average expenditures of a population based on its health status. The model is concurrent, and explains expenditures in the current year.

The DCG–HCC model is part of the same family of DCG models as the model that is currently used for risk adjustment of capitation payments to Medicare+Choice (M+C) plans. However, it differs in two key respects from the Principal Inpatient Diagnostic Cost Group model used in M+C payment. First, since ambulatory diagnoses are available from Medicare fee-for-service claims, the DCG–HCC model is more comprehensive. Second, the DCG–HCC model is concurrent, meaning that it forecasts expenditures in the current year and better reflects market changes.

6. Thresholds for Bonus Payment

A bonus threshold avoids paying a bonus for small differences in site versus comparison population (market area) expenditure growth rates that could be due to chance. Choosing an appropriate bonus threshold involves the probabilities of paying deserved bonuses versus not paying undeserved bonuses.

Based on simulations, a bonus threshold of 2 percent will be used. This means that a bonus would not be paid unless the difference in the site and market expenditure growth rates exceeds 2 percent. However, if the threshold is exceeded, the full bonus will be paid.

7. Rebasing

Rebasing means changing the base year for the PGP bonus calculation. Over the relatively short period of the demonstration (3 years), PGPs will not be rebased. If bonuses are allowed to accumulate, gains and losses, which are random to some extent, can offset each other to measure long-run cost control performance more accurately.

If the demonstration is continued past 3 years, the base year will be updated so that the Medicare program can capture more of PGP cost savings, and PGPs will not be rewarded indefinitely for past performance. Other demonstration policies may also be subject to change if the demonstration is continued past 3 years.

8. Withhold

Over the course of the demonstration, a participating PGP may accrue bonuses in some years and losses in other years, perhaps due to chance. The issue is whether full (positive) bonuses should be paid in the year they are accrued, or whether some portion should be withheld to offset future losses (for example, PGP actual expenditures exceed the performance target) in order to avoid having to recover payments from a PGP.

A flat 25 percent withholding rate will be applied annually to the bonus before payment. At the end of the demonstration, positive balances will be returned to the PGP.

9. Cost Outliers

Random variability of expenditure growth rates for PGP demonstration participants or their comparison populations may lead to a lack of savings even when participants are reducing services per beneficiary. There is the chance that a small group of extremely costly beneficiaries will be assigned to a PGP and could significantly change a PGP's per-capita expenditures and, hence, its bonus.

Thus, for each beneficiary assigned to a PGP or comparison group, annualized expenditures will be capped in calculating savings to avoid contamination by cost outliers. Capping expenditures will give PGPs an incentive to coordinate and manage the health care of the majority of patients assigned to them, while not penalizing the group for high-cost outliers or providing incentives to under use services for beneficiaries with highly complex conditions.

In 1997, more than 99 percent of Medicare fee-for-service beneficiaries had annualized expenditures of less than $100,000. In calculating savings, a beneficiary's expenditures will be capped at $100,000.

D. Quality Improvement Bonuses

The PGP demonstration allows for financial incentives for improving patient care process and outcomes. The BIPA states that ''at such time as the Secretary has established appropriate criteria based on evidence the Secretary determines to be sufficient, the Secretary shall also pay to a participating health care group, * * * an additional bonus for a year, equal to such portion as the Secretary may designate of the savings to the program under this title resulting from process improvements made by and patient outcome improvements attributable to activities of the group.''

We believe that the PGP's ability to manage patient care, especially chronic conditions afflicting Medicare beneficiaries, is critical to the group's ability to generate savings under the demonstration and, thus, be able to receive a bonus payment. We also recognize the numerous process and

outcome improvement activities that have been initiated by PGPs on their own to improve practice management and patient care as well as those initiated by commercial payers including private insurers, employers, and purchasing groups. Given the wide-ranging use of these indicators, we will work with PGPs to reduce administrative burdens and align incentives to the extent possible with other payers.

Under the demonstration, we will focus on linking financial incentives to improvements in process indicators of quality, although some outcome indicators will also be included. This is consistent with the BIPA 2000 mandate, and focuses on the quality indicators most easily measured, commonly used, and most relevant to the medical care operations of PGPs. We will reserve a maximum of 30 percent of the PGP bonus pool for bonuses related to quality improvement activities.

Medicare claims will be the primary data source for measuring quality indicators for the PGP demonstration. Using claims is low cost, reduces administrative burden on demonstration participants, and takes advantage of data already being used and available under the demonstration. Claims data will be used in calculating the PGP cost targets, performance comparisons, and Medicare savings for the bonus pool.

1. Process and Outcome Indicators

We will work with demonstration participants to select a group of core indicators for use in measuring process and outcome performance. Initially, we will seek to use eight process and outcome indicators. We will work with demonstration participants to identify a set of core measures that will be used uniformly for all participating PGPs. Measures will be agreed to by demonstration participants. Table 3 shows examples of process and outcomes performance measures.

TABLE 3.—PROPOSED PROCESS AND OUTCOME MEASURES

Quality indicator	Improvement target	Threshold target
Annual influenza vaccinations for all beneficiaries age 65 or older.	10% improvement over the deficit from 100% compliance.	75% compliance.
Hemoglobin A1c test every year for diabetics	10% improvement over the deficit from 100% compliance.	75% compliance.
Lipid profile test every 2 years for diabetics	10% improvement over the deficit from 100% compliance.	75% compliance.
Mammogram every 2 years for women aged 52–69	10% improvement over the deficit from 100% compliance.	75% compliance.
Chest radiograph and electrocardiogram <= 3 months after initial CHF diagnosis.	10% improvement over the deficit from 100% compliance.	75% compliance.
Left ventricular ejection fraction testing during the current year for beneficiaries hospitalized with a principal diagnosis of CHF during the current year.	10% improvement over the deficit from 100% compliance.	75% compliance.
Physician visit every 6 months for beneficiaries with chronic stable angina, COPD, CHF, or diabetes.	10% improvement over the deficit from 100% compliance.	90% compliance.
Rate of ACSC admissions per 1000 Medicare beneficiaries.	10% reduction from the previous year's rate	National average rate for FFS beneficiaries.

PGPs may also propose substituting two measures focused on process and outcome improvement activities that may be unique to their own practices. PGPs proposing process and outcome indicators should define the indicators and describe how they are used to improve physician performance, describe the process for evaluating and monitoring compliance (including examples of reports and profiles), and identify how aggregated Medicare claims data could be used to supplement or enhance the indicator and physician performance. Areas may include guideline compliance, patient safety initiatives, and chronic conditions impacting Medicare beneficiaries.

2. Targets for Earning a Quality Bonus

PGPs will have two different types of targets that they can meet to earn a quality bonus. Targets for quality measures will be based on either demonstrating improvement over time or achieving a predetermined threshold level for a quality indicator as described in the table above. Compliance with the indicator is met if either target is satisfied.

For example, a PGP could earn a bonus under the Hemoglobin A1c measure if—(1) At least 75 percent of the eligible beneficiaries assigned to the PGP receive the test during the performance year; or (2) the PGP demonstrates a 10-percent improvement over the prior year.

Improvement targets will be set using the following methodology that bases the target on improvements in the ''quality deficit.'' The quality deficit is defined as 100 percent minus the PGP's actual rate for assigned beneficiaries.

For example, if 30 percent of a PGP's diabetics had Hemoglobin A1c's tested in 1 year, it would have to raise that level to 37 percent the following year to demonstrate it had met the quality improvement target for that indicator. For example, a 70 percent deficit means a 7-percent improvement is required.

Allowing PGP's to earn bonuses by meeting or exceeding either pre-defined thresholds or improvement targets will give flexibility to PGPs, require bigger improvements for low performers than high performers, and take into consideration that it may be more difficult to improve on already high performance.

3. Calculating Quality Improvement Bonuses

Thirty percent of the PGP's bonus pool will be set aside for bonuses for PGP's meeting targets for process and outcome improvement measures. The actual bonus payment for process and outcome improvements is dependent on the number of measures that the group meets or exceeds the performance target.

For example, if eight measures are used, each measure would be worth 1/8 of the bonus pool for quality improvements. If the PGP satisfies compliance targets for four of the eight performance measures, its bonus would be 50 percent of the quality improvement bonus pool. If the PGP satisfies compliance targets for all eight measures, it would receive 100 percent of the quality bonus pool (for example, a full 30 percent).

E. Budget Neutrality

BIPA states ''the Secretary shall limit bonus payments under this section as necessary to ensure that the aggregate expenditures under this title (inclusive of bonus payments) with respect to patients within the scope of the demonstration do not exceed the amount which the Secretary estimates would be expended if the demonstration projects under this section were not implemented.''

Because of this requirement, bonuses will be paid from savings that the PGP generates from efficiency process and outcome improvements. Savings will be calculated using the methodology described in section II.B of this notice.

F. Demonstration Administration

Section 412 of the BIPA allows CMS to administer the demonstration program through a contract with a program administrator. At this time, we believe that it would be costly and not add value to use an external demonstration administrator. The demonstration can be more efficiently and effectively implemented by CMS given the extensive work already completed by the design and implementation contractors, CMS staff, the small scale of the demonstration, and the need to understand the linkages between payment incentives and improvements in process and outcome improvements. If CMS were to implement this program on a national scale, the additional resources and expertise of an external program administrator would be warranted.

G. Independent Evaluation

CMS will assess the impact of the demonstration on Medicare beneficiaries, physicians, and Medicare program costs as well as administrative burden through an independent evaluation. The evaluation will be conducted by CMS through an independent contractor. Demonstration participants must agree to cooperate fully with the independent evaluation contractor.

III. Provisions of This Notice

A. Purpose

This section outlines the requirements for eligible health care groups seeking to apply for the demonstration and application and submission requirements.

B. Eligible Organizations

Health care groups with at least 200 physician full-time equivalents may apply. Physician means any individual who furnishes services that may be paid for as physicians' services under the Medicare program. A health care group is defined as a group of physicians organized, at least in part, for the purpose of providing physicians' services under the Medicare program and may include a hospital and any other individual or entity furnishing services covered under the Medicare program that is affiliated with the health care group under an arrangement structured so that the individual or entity participates in the demonstration and shares in any bonus.

We are focusing the demonstration on large physician group practices. These organizations influence a significant amount of Medicare expenditures and have sufficient Medicare beneficiary volume to provide greater statistical reliability in calculating Medicare savings and/or losses under the demonstration.

We are seeking several different types of physician group practices to test the new incentives in a range of organizational and clinical environments. Eligible organizations include freestanding multispecialty physician group practices, faculty group practices, and physician groups that are part of health care systems, medical centers, or that have affiliations with hospitals and/or other providers.

Physician group practices that can respond effectively to the demonstration's new incentives are encouraged to apply. In particular, multispecialty physician groups with well-developed information and clinical and management systems should consider applying. We do not plan to make awards to health care groups currently participating in Medicare fee-for-service demonstrations.

C. Application Requirements

Applicants must submit their applications in the standard format outlined in CMS's Medicare Waiver Demonstration Application in order to be considered for review by the technical review panel. Applications not received in this format will not be considered for review.

The Medicare Waiver Demonstration Application follows this demonstration notice and may also be accessed at the following internet address: *http://www.cms.hhs.gov/healthplans/research*. The application outlines all application requirements including the format and content requirements. We note that the Medicare Waiver Demonstration Application is currently under review by the Office of Management and Budget (OMB) in regard to the Paperwork Reduction Act. Upon approval from OMB, we will update the application to denote OMB's approval.

1. Submission of Applications

We must receive applications (an unbound original and 2 copies plus an electronic copy) as indicated in the **DATES** and **ADDRESSES** sections of this notice. Only applications that are considered ''timely'' will be reviewed and considered by the technical review panel. Applications must be typed for clarity and should not exceed 40 double-spaced pages, exclusive of the cover letter, executive summary, resumes, forms, and supporting documentation.

2. Evaluation Process

We will convene technical review panels consisting of outside experts and our staff to review all of the proposals. Panelists will receive a copy of the proposals along with a technical summary. Panelists will be asked to numerically rate and rank the proposals and provide a written and oral assessment of the proposals using the following criteria.

3. Evaluation Criteria

Technical review panelists will assess and score applicants' responsiveness using the following evaluation criteria.

a. Organizational Structure (15 Points)

- A multispecialty physician group with at least 200 or more full time equivalent physicians.
- Administrative arrangements that are in place to share bonuses with any affiliated entities.
- The organization has capacity to provide and/or coordinate Part A & Part B services through Medicare participating or approved providers.

b. Leadership and Management (15 Points)

- The operations are managed by an executive whose appointment and removal are under the control of the organization's policy making body.
- The leadership has demonstrated the ability to influence and/or direct clinical practice to improve efficiency processes and outcomes.
- The organization has effective procedures to monitor use of appropriate health services and to control costs of health services to achieve utilization goals (for example, high cost case management and disease management).
- The organization has sufficient staff and systems to organize, plan, control, and evaluate the clinical financial and operations of the organization.

c. Financial Stability (10 Points)

- The current audited balance sheet shows a positive net worth.
- The current audited income statement shows sufficient cash flow and/or liquidity to meet financial obligations.
- The organization has a net operating surplus or acceptable financial plan for achieving.

d. Quality Assurance (20 Points)

- A physician directed quality assurance committee oversees an on-going action oriented quality assurance program. The committee is accountable for the quality assurance program and any delegated functions, and has processes for communicating activities to relevant parties.
- A quality assurance program establishes performance standards for quality of care and services, cost effectiveness, and process and outcome improvements.
- The quality initiatives are clearly defined and dedicated personnel are responsible for implementing, monitoring, and integrating changes into practice.
- The quality assurance methodology requires health outcome review of high volume and/or high-risk diagnosis or procedures, adverse outcomes and other quality of care related problems.
- Processes are in place for implementing and monitoring corrective action plans.

e. Process and Outcome Improvement (20 Points)

- Care coordination activities focus on diseases and conditions relevant to the Medicare population.
- Relevant process and outcome measures are monitored, performance assessed, and processes for sharing results and promoting accountability are in place.
- Information systems collect individual patient information and have the capacity to aggregate data to identify practice patterns and/or suspected aberrant care. Systems support both individual and pattern analysis and other quality assurance activities.
- The organization maintains a health record keeping system through which pertinent information relating to the health care of patients it serves is warehoused and is readily available to appropriate professionals.
- Patient safety is a focus of the organization with executive responsibility.

f. Demonstration Implementation Plan (20 Points)

- The organization understands demonstration principles and goals and objectives.
- The organization has clearly defined an implementation plan with measurable goals and objectives to improve efficiency, process and outcomes.
- The organization has sufficient infrastructure (for example, staff and systems) to implement, monitor, evaluate, and report on demonstration.
- The organization has successful results in implementing similar activities.

4. Final Selection

Our Administrator will select participants from among the most highly qualified candidates. Sites will be selected based on a variety of factors including organizational structure, operational feasibility, and geographic location. Awardees will be subject to our standard terms and conditions, and may be subject to special terms and conditions that are identified during the review process. We reserve the right to conduct site visits before beginning the demonstration. We expect to select up to six physician group practices to participate in the demonstration.

IV. Collection of Information Requirements

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of Health and Human Services, the Centers for Medicare and Medicaid Services (CMS), is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. We cannot reasonably comply with the normal clearance procedures because without the timely approval of this application and instructions, these demonstrations would not be implemented in a timely manner resulting in the potential loss of alternative and flexible benefits for beneficiaries. As a result, beneficiaries may not be provided health care choices that will produce the most beneficial health care outcomes. In addition, beneficiaries will be provided with an alternative health care choice that may alleviate the need for supplemental health care coverage resulting in more cost efficient health care.

We are requesting OMB review and approval of this collection within 10 business days from the date of this publication, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below within 9 days of this publication. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval:

Type of Information Collection Request: New collection.

Title of Information Collection: Medicare Waiver Demonstration Application.

Form No.: CMS–10069 (OMB# 0938–NEW).

Use: The Medicare Waiver Demonstration Application will be used to collect standard information needed to implement Congressionally mandated and administration high priority demonstrations. The application will be used to gather information about the characteristics of the applicant's organization, benefits and services they propose to offer, success in operating the model, and evidence that the model is likely to be successful in the Medicare program. The standard application will be used for all waiver demonstrations and will reduce the burden on applicants, provide for consistent and timely information collections across the demonstration, and provide a user-friendly format for respondents.

Frequency: On Occasion.

Affected Public: Business or other for profit and not for profit.

Number of Respondents: 75.

Total Annual Responses: 75.

Total Annual Hours: 1,600.

For convenience to the reader, we have attached a copy of the proposed standardized application and instructions to this notice for review and comment.

We have submitted a copy of this notice and related information collection package to OMB for its review of these information collections.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and record keeping requirements must be mailed and/or faxed to the designees referenced below, within 9 days of the publication of this notice:

Centers for Medicare and Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–0262, Attn: John Burke;

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Brenda Aguilar, CMS Desk Officer.

Authority: Section 412 of the Medicare, Medicaid, and State Child Health Insurance Program Benefits Improvement and Protection Act of 2000.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 12, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

BILLING CODE 4120–01–P

U. S. DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

MEDICARE WAIVER DEMONSTRATION APPLICATION

DISCLOSURE STATEMENT According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-NEW. The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, N2-14-26, Baltimore, Maryland 21244-1850.

Medicare Waiver Demonstration Applicant Data Sheet	**Date Submitted**
Applicant Legal Name	**Date Received by CMS**
Address (city, county, state, zip code)	**Name, telephone number and address of person to be contacted on matters involving the application.**
Descriptive Title of Applicant's Project	**Project Duration** (MM/DD/YYYY) From _____ To _____
Proposed Project	**Type of Applicant** ☐ Academic Institution ☐ Individual ☐ Profit Organization ☐ Not for Profit Organization ☐ Other, please specify
Areas Affected by Project (cities, counties, states)	
Applicant's Medicare Provider Number(s)	**Applicant's Employer Identification Number**
Is The Applicant a Medicare Provider/Organization in Good Standing?	☐ Yes ☐ No If "No", attach an explanation.
TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMLY WITH THE TERMS AND CONDITIONS OF THE AWARD AND APPLICABLE FEDERAL REQUIREMENTS IF AWARDED.	
Type Name and Title of Authorized Representative	**Telephone Number**
Signature of Authorized Representative	**Date Signed**

This application provides an opportunity for eligible organizations to apply to participate in Medicare-waiver-only demonstrations sponsored by the Centers for Medicare & Medicaid Services (CMS).

CMS conducts Medicare-waiver-only demonstrations to test innovations that have been shown to be successful in the private sector in improving access and quality and/or lowering health care costs. These demonstrations may involve new benefits, fee-for-service or Medicare+Choice payment methodologies, and/or risk sharing that are not currently permitted under Medicare statute.

Section 402 of Pub. L. 92-603 grants CMS the authority to waive Medicare payment and benefit statutes to conduct these demonstrations. Demonstrations may also be initiated as a result of Congressional mandate.

BUDGET NEUTRALITY Medicare-waiver-only demonstrations must be budget neutral. Budget neutrality means that the expected costs under the demonstration cannot be more than the expected cost were the demonstration not to occur. Applicants must supply information and assumptions supporting budget neutrality that CMS will use in preparing a waiver package for submission to the President's Office of Management and Budget (OMB). OMB must approve Medicare waivers before implementing the demonstration.

DUE DATE Applications will be considered timely if we receive on or before the due date specified in the "DATES" section of the demonstration notice. Applications must be received by 5 P.M EST/EDT on the due date.

Only applications that are considered "timely" will be reviewed and considered by the technical review panel.

APPLICATION SUBMISSION An unbound original and 2 copies plus an electronic copy on diskette of the APPLICATION should be MAILED to the following address:

Department of Health and Human Services, Centers for Medicare & Medicaid Services, ATTN: Project Officer (Insert project officer name listed in demonstration announcement and name of demonstration)
Center for Beneficiary Choices, Division of Demonstration Programs, Mail Stop C4-17-27, 7500 Security Boulevard, Baltimore, Maryland, 21244

Applications must be typed for clarity and should not exceed 40 double-spaced pages, exclusive of the cover letter, executive summary, forms, and supporting documentation.

Because of staffing and resource limitations, and because we require an application containing an original signature, we cannot accept applications by facsimile (FAX) transmission.

FOR FURTHER INFORMATION
Please contact the project officer listed in the demonstration announcement and/or visit the CMS website at http://www.cms.hhs.gov/healthplans/research. Additional information about the demonstration, for example, fact sheets,

design reports, press releases, and question and answer documents will be periodically posted on the website. Be sure to check the website frequently if applying for a demonstration to be sure you have the most current information available.

APPLICATION CONTENTS OUTLINE To facilitate the review process, applications should be arranged in the following order:

1. Cover Letter
2. Medicare Waiver Demonstration Applicant Data Sheet
3. Executive Summary
4. Problem Statement
5. Demonstration Design
6. Organizational Structure & Capabilities
7. Performance Results
8. Payment Methodology & Budget Neutrality
9. Demonstration Implementation Plan
10. Supplemental Materials

CMS may provide start-up funds to cover implementation costs associated with the demonstration. If start-up funding is available, it will be announced in the demonstration solicitation. If requesting start-up funds, please include the Application for Federal Assistance Standard Form 424 after the Medicare Waiver Demonstration Applicant Data Sheet in the application and indicate the amount of funds requested in the cover letter.

APPLICATION REQUIREMENTS We will use all the information you submit in the application review process. Your application must include the following information.

Cover Letter Please be sure to identify the demonstration, indicate the target population and geographic location of the demonstration (for example, urban or rural), the CMS provider numbers assigned to the applicant, contact person, and contact information.

Medicare Waiver Demonstration Applicant Data Sheet Complete, sign, date, and return the Medicare Waiver Demonstration Applicant Data Sheet found at the beginning of this application.

Executive Summary Provide a 4 page summary of the key elements of the proposal (for example, Sections 3, 4, 5, 6, 7, 8, 9 under "Application Contents Outline").

Problem Statement Describe Medicare's current coverage and payment policy, and describe how or why changes to current policy would lead to reductions in Medicare expenditures or improvements in Medicare beneficiaries' access to and/or quality of care. Provide local examples. Describe the policy rationale for the proposal, who will benefit and why, and any previous experience with the proposed intervention.

Demonstration Design Describe the intervention including the scope of services covered and/or benefit design, and payment methodology including financial incentives and/or risk sharing arrangements. Indicate how eligible beneficiaries will be identified, targeted, and enrolled in the demonstration (if applicable).

If applicable, describe the study design. Identify the intervention and comparison

groups, and how Medicare beneficiaries will be assigned to each group. If a randomized study design is proposed, describe the process and provide a copy of the informed consent to be used.

Organizational Structure & Capabilities Describe your governance structure and management and clinical teams, and their success before implementing the proposed intervention. Provide an organizational chart that describes the functional and reporting lines of major departments and/or entities.

Demonstrate that infrastructure exists to implement and carry out the demonstration project. Provide copies of reports from clinical, financial, and management information systems and describe how they are used.

Provide copies of applicable Federal and State licenses. Indicate if the applicant is a Medicare provider in good standing. Describe any other applicable accreditation, credentialing, and/or certification processes and results.

Provide documentation of your organization's financial viability that will enable it to participate actively and successfully in the demonstration, for example, as a formal audit opinion from the past 3 years or the balance sheet from the past 3 years with a summary description. If there are any financial concerns, explain how your organization has addressed or will address these problems.

Performance Results Describe your systems and processes for monitoring clinical, financial, and operational performance. Identify key metrics collected and describe how you use this information to continuously improve the proposed intervention, correct deficiencies, satisfy beneficiaries, providers, and/or payers.

Payment Methodology & Budget Neutrality Please indicate the proposed payment amount and method. Proposed payments may be based on fee-for-service or Medicare+Choice rates, methodologies, or some combination, and may involve risk sharing.

Describe in detail any risk sharing arrangements. Provide a revenue and expense statement by year for the life of the demonstration.

Demonstrate that the proposed intervention is budget neutral. Provide expected, best, and worse case scenarios. Include all supporting cost effectiveness, evidence, and assumptions used for the calculations.

If start-up funds are available as indicated in the demonstration announcement, please indicate the amount requested and include in your budget neutrality calculations. Note, if requesting start-up funds, applicants must complete an "Application for Federal Assistance" Standard Form 424 that can be found on the CMS website at http://forms.psc.gov/forms/sf/sf.html and submit with this application.

Demonstration Implementation Plan Describe your implementation strategy, including tasks, resources, and timeline to implement the demonstration. Identify internal system and process modifications required to implement the demonstration. Describe your recruitment strategy and contingency plans for achieving beneficiary

thresholds. Identify the individuals and staff responsible for implementing the demonstration and attach biographies.

Supplemental Materials Include in this section copies of supporting materials requested or referenced throughout the application.

EVALUATION PROCESS We will convene technical review panels consisting of outside experts and our staff to review all of the applications. Panelists will receive a copy of the application along with a technical summary. Panelists will be asked to numerically rate and rank the application using evaluation criteria contained in the demonstration announcement.

Applicants should review the demonstration announcement for the specific evaluation criteria to be used by panelists to assess proposals, as well as additional information on the evaluation process and selection of awardees.

[FR Doc. 02–24443 Filed 9–26–02; 8:45 am]
BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9014–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April 2002 Through June 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from April 2002, through June 2002, relating to the Medicare and Medicaid programs. This notice also provides information on national coverage determinations affecting specific medical and health care services under Medicare.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are also including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. (See Section III of this notice for how to obtain listed material.)

Questions concerning Medicare items in Addendum III may be addressed to Karen Bowman, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Centers for Medicare & Medicaid Services, C5–13–27, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–5252.

Questions concerning Medicaid items in Addendum III may be addressed to Cindy Potter, Center for Medicaid State Operations, Policy Coordination and Planning Group, Centers for Medicare & Medicaid Services, S2–01–01, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–6714.

Questions concerning national coverage determinations should be directed to Kimberly Long, Office of Clinical Standards and Quality, Coverage and Analysis Group, Centers for Medicare & Medicaid Services, S3–11–15, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–5702.

Questions concerning all other information may be addressed to Glenn McGuirk, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Centers for Medicare & Medicaid Services, C5–12–18, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–5723.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs. These programs pay for health care and related services for 39 million Medicare beneficiaries and 35 million Medicaid recipients. Administration of these programs involves (1) furnishing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public and (2) maintaining effective communications with regional offices, State governments, State Medicaid agencies, State survey agencies, various providers of health care, fiscal intermediaries and carriers that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act). We also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month time frame.

II. How to Use the Addenda

This notice is organized so that a reader may review the subjects of manual issuances, memoranda, substantive and interpretive regulations, and national coverage determinations published during the timeframe to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) published in 1988, and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555). Those interested in the procedures used in making national coverage determinations may review the April 27, 1999 publication (64 FR 22619). In this publication, the 1989 proposed rule affecting national coverage procedures and decisions (54 FR 4302) was withdrawn, and the procedures for national coverage determinations established.

To aid the reader, we have organized and divided this current listing into six addenda:

- Addendum I lists the publication dates of the most recent quarterly listings of program issuances.
- Addendum II identifies previous **Federal Register** documents that contain a description of all previously published CMS Medicare and Medicaid manuals and memoranda.
- Addendum III lists a unique CMS transmittal number for each instruction in our manuals or Program Memoranda and its subject matter. A transmittal may consist of a single instruction or many. Often, it is necessary to use information in a transmittal in conjunction with information currently in the manuals.
- Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarters covered by this notice. For each item we list the—
  - Date published;
  - **Federal Register** citation;
  - Parts of the Code of Federal Regulations (CFR) that have changed (if applicable);
  - Agency file code number; and
  - Title of the regulation.
- Addendum V includes completed national coverage determinations from June 28, 1999, the effective date of Medicare's new coverage process. Completed decisions are identified by title, a brief description, effective date,

and section in the appropriate federal publication.

III. How to Obtain Listed Material

A. Manuals

Those wishing to subscribe to program manuals should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, most manuals are available at the following Internet address: *http://www.hcfa.gov/pubforms/progman.htm.*

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through *GPO Access.* The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is *http://www.access.gpo.gov/nara/index.html,* by using local WAIS client software, or by telnet to *swais.access.gpo.gov,* then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. Interested individuals can obtain copies from the nearest CMS Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register**. Rulings, beginning with those released in 1995, are available online, through the CMS home page. The Internet address is *http://www.hcfa.gov/regs/rulings.htm.*

D. CMS's Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM and may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- CMS-related regulations.
- CMS manuals and monthly revisions.
- CMS program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1999. (Updated titles of the Social Security Laws are available on the Internet at *http://www.ssa.gov/OP_Home/ssact/comp-toc.htm.)* The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How to Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most Federal Government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

Superintendent of Documents numbers for each CMS publication are shown in Addendum III, along with the CMS publication and transmittal numbers. To help FDLs locate the materials, use the Superintendent of Documents number, plus the transmittal number. For example, to find the Part 3—Program Administration, (CMS Pub. 14–3) transmittal entitled ''Correct Coding Initiative,'' use the Superintendent of Documents No. HE 22.8/7 and the transmittal number 1746.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714 Medical Assistance Program)

Dated: September 16, 2002.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

August 11, 1998 (63 FR 42857)
September 16, 1998 (63 FR 49598)
December 9, 1998 (63 FR 67899)
May 11, 1999 (64 FR 25351)
November 2, 1999 (64 FR 59185)
December 7, 1999 (64 FR 68357)
January 10, 2000 (65 FR 1400)
May 30, 2000 (65 FR 34481)
June 28, 2002 (67 FR 43762)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. (Please note that in this publication the 1989 proposed rule referred to, concerning the criteria for national coverage determinations, was withdrawn (64 FR 22619)). A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992 (57 FR 47468).

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[April 2002 Through June 2002]

Transmittal No.	Manual/subject/publication number
	Intermediary Manual **Part 2—Audits, Reimbursement Program Administration** **(CMS Pub. 13–2)** **(Superintendent of Documents No. HE 22.8/6–2)**
418	Beneficiary Services.
419	Beneficiary Services.
	Intermediary Manual **Part 3—Audits, Reimbursement Program Administration** **(CMS Pub. 113–3)** **(Superintendent of Documents, No. HE 22.8/6)**
1854	Further Development Is Not Necessary.
	Further Development Is Required.
	Methodology for Review of Hospital Billing Data.
1855	Security-Related Requirements for Subcontractor Arrangements With Network Services.
	Advise Your Provider and Network Services Vendors.
	Network Services Agreement.
	Notification to Provider and Eligibility Verification Vendors.
1856	Overpayments for Provider Services—General.
1857	Body of Report, Section D: Miscellaneous Data
	Carriers Manual **Part 2—Program Administration** **(CMS Pub. 14–2)** **(Superintendent of Documents, No. HE 22.8/7.2)**
143	Beneficiary Services.
144	Beneficiary Services.
	Carriers Manual **Part 3—Program Administration** **(CMS Pub. 14–3)** **(Superintendent of Documents, No. HE 22.8/7)**
1746	Correct Coding Initiative.
1747	Claims Processing Procedures for Physician/Supplier Services to Health Maintenance Organization Members.
1748	The ''Do Not Forward'' Initiative.
1749	Security-Related Requirements for Subcontractor Arrangements With Network Services.
	Advise Your Providers and Network Services Vendors.
	Network Services Agreement.
	Notification to Providers and Eligibility Verification Vendors.
1750	Unprocessable Claims.
	Claims Processing Terminology.
	Handling Unprocessable Claims.
	Data Element Requirements Matrix.
	Data Element Requirements Exhibits.
1751	Payment to Supplier of Diagnostic Test for Purchased Interpretations.
	Area Carrier-Physician's Services.
	Disposition of Misdirected Claims.
	Physician or Supplier Information.
	Purchased Diagnostic Tests.
1752	Clarification of Billing Requirements for Maintenance and Servicing for Capped Rental Items.
1753	Physicians' Services Paid Under Fee Schedule.
	Group Therapy Services (Code 97150).
	Therapy Students.
1754	Overpayments—General.
1755	Furnishing Physician Fee Schedule Data for National Codes.
	Furnishing Fee Schedule (Excluding Physician Fee Schedule), Prevailing Charge and Conversion Factor Data to Palmetto.
	Government Benefits Administrators, Fiscal Intermediaries, State Agencies, Indian Health Services and United Mine Workers.
1756	Part C—Miscellaneous Claims Data.
	Carriers Manual **Part 4—Program Administration** **(CMS Pub. 14–4)** **(Superintendent of Documents No. HE 22.8/7)**
26	Provider of Service or Supplier Information.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 2002 Through June 2002]

Transmittal No.	Manual/subject/publication number
	Program Memorandum Intermediaries (CMS Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)
A–02–027	Installation of Version 27.2 of the Provider Statistical and Reimbursement Report.
A–02–028	Upcoming Train-the-Trainer Session for Hospital Swing Bed Facility Prospective Payment System.
A–02–029	Implementation of the Health Insurance Portability and Accountability Act Health Care Eligibility Benefit Inquiry/Response Transaction (270/271) Standard.
A–02–030	Revisions to the Home Health Prospective Payment System Pricer Software—Regional Home Health Intermediaries Only.
A–02–031	Updates to Common Working File Editing of Intermediary Claims for Durable Medical Equipment and Prosthetic/Orthotic Devices.
A–02–032	Diabetes Self Management Training Payment.
A–02–033	Sending Payee Information From Fiscal Intermediary Standard System to the Health Care Integrated General Ledger Accounting System.
A–02–034	Submission of the Swing Bed Minimum Data Set Data for Swing Bed Hospitals.
A–02–035	Revision to the 837 Interface Format for Sending Claims Accounting Information From Fiscal Intermediary Standard System to the Healthcare Integrated General Ledger Accounting System.
A–02–036	Health Insurance Portability and Accountability Act Institutional 837 Health Care Claim—Outpatient Hospice Implementation Direction.
A–02–037	Health Insurance Portability and Accountability Act Institutional 837 Health Care Claim—Home Health Implementation Direction.
A–02–038	Modification of Common Working File Administrative Bulletin Crossover Edit 7111 and ''Alert'' 7531.
A–02–039	Coverage and Billing of the Diagnosis and Treatment of Peripheral Neuropathy With Loss of Protective Sensation in People With Diabetes.
A–02–040	Scheduled Release for July Updates to Software Programs and Pricing/Coding Files.
A–02–041	New Patient Status Code 64.
A–02–042	Clarification to Periodic Interim Payment For Home Health Provider and Clarification On Extension of Due Dates for Filling Provider Cost Reports.
A–02–043	Audit Guidance Pertaining to Write-offs of Small Debit Balances in Patients' Account Receivable.
A–02–044	Announcement of Medicare Rural Health Clinics and Federally Qualified Health Center Payment Rate Increases, Changes to the Rural Health Clinics Benefit Made by The Medicare, Medicaid, and State Child Health Insurance Program Benefits Improvement and Protection Act of 2000 Clarification Regarding Drugs Furnished By Rural Health Clinics Federally Qualified Health Center.
A–02–045	Frequently Asked Questions About Home Health Advance Beneficiary Notice.
A–02–046	Clarification of Part B Medicare Payment for 18 Health Common Procedure Coding System Codes to Skilled Nursing Facilities.
A–02–047	July Medicare Outpatient Code Editor Specifications Version 17.2 for Bills From Hospitals That Are Not Paid Under the Outpatient Prospective Payment System.
A–02–048	Extension of the Deadline for Hospitals to Make Elections to Reduce Beneficiary Coinsurance for 2002 Under the Outpatient Prospective Payment System.
A–02–049	Installation of Version 27.3 of the Provider Statistical and Reimbursement Report.
A–02–050	July 2002 Update to the Hospital Outpatient Prospective Payment System.
A–02–051	Health Insurance Portability and Accountability Act Testing and Certification Requirements and Date Changes.
A–02–052	July Outpatient Code Editor Specifications Version (V3.1)
A–02–053	Indian Health Service Hospital Payment Rates for Calendar Year 2002.
A–02–054	Use of Medical Review Indicators for Comprehensive Error Rate Testing.
A–02–055	Extended Repayment Schedules for Home Health Providers Who Received the Special Periodic Interim Payment.
A–02–056	Special Handling of End Stage Renal Disease Claims Containing Healthcare Common Procedure Coding System Code J1955 (Levocarnitine).
	Program Memorandum Carriers (CMS Pub. 60B) (Superintendent of Documents, No. HE 22.8/6–5)
A–02–022	Elimination of Certificate of Medical Necessity Requirement for Continuous Positive Airway Pressure Device.
A–02–023	Revision; The Do Not Forward Initiative Using ''Return Service Requested''.
A–02–024	Deceased Physician Unique Physician Identification Number Information—(Transmittal B–01–73).
A–02–025	Reporting the Obligated to Accept as Payment in Full Amount on the American Standards Institute Health Data Committee X12 File Format 837 Version 4010 as Adopted Under the Health Insurance Portability and Accountability Act for Medicare Secondary Payer Claims.
A–02–026	Revised: New Permanent Modifier for ''Specific Required Documentation on File''.
A–02–027	Annual Updating of Interface Control Document—9-Codes Must Be Date of Service Driven.
A–02–028	Sending Payee Information From Multi-Carrier System to the Healthcare Integrated General Ledger Accounting System.
A–02–029	Durable Medical Equipment Regional Carrier—New Message for Advanced Beneficiary Note Denials.
B–02–030	Reporting Claims Accounting Information to the Healthcare Integrated General Ledger Accounting System for the Durable Medical Equipment Regional Carriers.
B–02–031	Cessation of Certain Durable Medical Equipment Regional Carriers Activities.
B–02–032	Medical Review Progressive Corrective Action.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 2002 Through June 2002]

Transmittal No.	Manual/subject/publication number
B–02–033	Implementation of the Health Insurance Portability and Accountability Act Health Care Eligibility Benefit Inquiry/Response Transaction (270/271) Standard.
B–02–034	Implementation of the National Council for Prescription Drug Programs Telecommunications Standard Version 5.1 and the Equivalent Batch Standard Version for Retail Pharmacy Drug-Transactions.
B–02–035	Elimination of Certificate of Medical Necessity Requirement for Continuous Positive Airway Pressure Device—Clarification.
B–02–036	Changes to Correct Coding Edits, Version 8.3, Effective October 1, 2002.
B–02–037	New Medicare Medical Review Guidelines for Claims for Diabetic Testing Supplies.
B–02–038	Health Insurance Portability and Accountability Act of 1996 Testing and Certification Requirements and Date Changes.
	Program Memorandum Intermediaries/Carriers (CMS Pub. 60A/B) (Superintendent of Documents, No. HE 22.8/6–5)
AB–02–042	Coverage and Billing of the Diagnosis and Treatment of Peripheral Neuropathy With Loss of Protective Sensation in People With Diabetes.
AB–02–043	Corrections to Program Memorandum A–01–135—Codes Billable by Skilled Nursing Facility and Suppliers for Skilled Nursing Facility Residents.
AB–02–044	July Quarterly Update for 2002 Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Fee Schedule.
AB–02–045	Clarification of the Allocation of Initial Claim Entry Activities Where the Claim Is Paid Secondary by Medicare.
AB–02–046	Availability of Deceased Beneficiary Data of Death Files (Calendar Years 2000 and 2001).
AB–02–047	Amended Contractor Assessment Security Tool (Cast) Submission Instructions and Due Dates.
AB–02–048	Program Management Provider/Supplier Education and Training.
AB–02–049	New Source of Provider Information Available on Centers for Medicare Services Website April 22, 2002.
AB–02–050	Program Memorandum on Written Statements of Intent to Claim Medicare Benefits.
AB–02–051	Change of Interest Citation in the Overpayment Sections of the Medicare Intermediary Manual and the Medicare Carriers Manual from 42 Code of Federal Regulations § 405.37 to 42 Code of Federal Regulations § 405.378.
AB–02–052	Revision of Medicare Reimbursement for Telehealth Services.
AB–02–053	Correction to the Revision of Medicare Reimbursement for Telehealth Service.
AB–02–054	Generating an Outbound Coordination of Benefits X12N 837 (4010) When Required Data Is Missing or Invalid.
AB–02–055	Claims Processing Instructions to Conclude the Durable Medical Equipment Prosthetics, Orthotics, and Supplies Competitive Bidding Demonstration.
AB–02–056	Expand Standard Data Format and Remove Common Working File Y2K Wrapper Logic for Fiscal Intermediary Claims/Trailers and Carriers/Durable Medical Equipment Regional Carrier Trailers—Incoming and Response Transactions.
AB–02–057	Charging Fees to Providers for Medicare Education and Training Activities Program Management.
AB–02–058	Second Update to the 2002 Medicare Physician Fee Schedule Database.
AB–02–059	Additional Clarification for Medical Nutrition Therapy Services.
AB–02–060	Coverage and Billing for Intravenous Immune Globulin for the Treatment of Autoimmune Mucocutaneous Blistering Diseases.
AB–02–061	Common Working File of Claims for Medicare Beneficiaries in State or Local Custody Under a Penal Authority.
AB–02–062	Cost Per Treatment Code 55873 for Cryosurgery of the Prostate: Changes to Ensure Proper Payment for Outpatient Hospital Facility Fee and Professional Services.
AB–02–063	Instructions for Fiscal Intermediary Standard System and Multi-Carriers System Testing of 835 Interface With the Healthcare Integrated General Ledger Accounting System.
AB–02–064	Coverage and Billing for Home Prothrombin Time International Normalized Ratio Monitoring for Anticoagulation Management.
AB–02–065	Coverage an Related Claims Processing Requirements for Positron Emission Tomography Scans—for Breast Cancer and Revised Coverage Conditions for Myocardial Viability.
AB–02–066	Non-coverage of Perception Sensory Threshold/Nerve Conduction Threshold Test.
AB–02–067	Remittance Advice Coding and Health Insurance Portability and Accountability Act, Transaction 835v4010 Completion Update.
AB–02–068	Notice of Interest Rate for Medicare Overpayments and Underpayments.
AB–02–069	July 2002 Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Fee Schedule Files.
AB–02–070	New Waived Tests—April 12, 2002.
AB–02–071	Health Insurance Portability and Accountability Act of 1996.
AB–02–072	Medicare Payment for Drugs and Biologicals Furnished Incident to a Physician's Service.
AB–02–073	Installation of a New Medicare Customer Service Center Next Generation Desktop Application.
AB–02–074	Healthcare Provider Taxonomy Codes (HPTC) Crosswalk.
AB–02–075	Payment Limit for Drugs and Biologicals.
AB–02–076	Registration Process for, and Expectations for Use of, the Healthcare Integrity and Protection Data Bank.
AB–02–077	Common Working File, Beneficiary Other Insurer Auxiliary File.
AB–02–078	Provider Education Article: Medicare Coverage of Rehabilitation Services for Beneficiaries With Vision Impairment.
AB–02–079	Customer Services Representative Response to Physician and Provider Correct Coding Initiative Questions.
AB–02–080	Payment for Services Furnished by Audiologists.
AB–02–081	Core Security Requirements and Associated Responsibilities.
AB–02–082	Coding Changes for Sodium Hyaluronate.
AB–02–083	Effective Date Revision for Medicare Intermediary Manual, Transmittal 1855, dated April 26, 2002, Change Request 2057, and Medicare Carriers Manual, Transmittal 1749, dated April 26, 2002, Change Request 2057.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 2002 Through June 2002]

Transmittal No.	Manual/subject/publication number
AB–02–084	Additional Information Regarding Medicare Payment Allowance for Flu Vaccine.
AB–02–085	Medicare Contractor Annual Update of the International Classification of Diseases, Ninth Revision, Clinical Modification.
AB–02–086	Change in Procedure for State Requests for Retrospective Medicare Claims.
AB–02–087	Delay in Enforcement of National Coverage Determinations for Clinical Diagnostic Laboratory Services.
AB–02–088	System Networking Electronic Correspondence Referral System 1.2 User and Installation Guides.
AB–02–089	New Automatic Notice of Change to Medicare Secondary Payer Auxiliary File.
AB–02–090	Medicare Secondary Payer: (1) Procedures for ''Write-Off—Closed'' of Medicare Secondary Payer Accounts Receivable; (2) Elimination of Automated/Systems ''Write-Off—Closed'' Actions for Medicare Secondary Payer Accounts Receivable; Zero Backend Tolerance for Medicare Secondary Payer Account Receivable (Reminder); and (3) Date for Establishment of Medicare Secondary Payer Account Receivable (Reminder).
	Program Memorandum—Medicaid State Agencies (CMS Pub. 17) (Superintendent of Documents, No. HE 22.8/6–5)
02–1	Title XIX of The Social Security Act, Post-Eligibility Treatment of Income.
	State Operations Manual—Provider Certification (CMS Pub. 7)
30	Revisions to Appendix T—Swing-Bed Hospitals.
	Peer Review Organization (CMS Pub. 19) (Superintendent of Documents, No. HE 22.8/8–15)
87	Background. Eligibility Competing for a Quality Improvement Organization Contract. Additional Requirements for a Physician-Access or Physician-Sponsored Organization. Responsibilities of the Board. Health Care Affiliated Limitation. Consumer Representative. Prohibition Against Sanctioned Board Members Background. Renewal Determination.
88	Background. Statutory Authority for Memorandum of Agreements. Scope. Provider Memorandum Agreement Specifications. Memorandums of Agreements With Specific Providers. Memorandum of Agreement Cover Letter for Providers. Model Memorandum of Agreement for Providers. Model Memorandum of Agreement for State Licensing/Certification Agency.
	Hospice Manual (CMS Pub. 10) (Superintendent of Documents, No. HE 22.8/2)
784	Identifying Other Primary Payers During the Admission Process.
785	Transplantation.
786	Billing for Mammography Screening. Diagnostic Mammography. Diagnostic and Screening Mammograms Performed With New Technologies.
	Home Health Agency Manual (CMS Pub. 11) (Superintendent of Documents, No. HE 33.8/5)
300	Billing Procedures For and Agency Being Assigned Multiple Provider Numbers or a Change in Provider Number. More Than One Agency Furnished Home Health Services. Transfer to Another Agency Under the Same Plan of Treatment. Clinical Laboratory Improvement Amendments. New Software for the Home Health Prospective Payment System Environment Adjustments of Episode Payment—Exclusivity and Multiplicity of Adjustments. Adjustments of Episode Payment—Exclusivity and Multiplicity of Adjustments. General Guidance on Line Item Billing Under Home Health Prospective Payment System. Request for Anticipated Payment. Home Health Prospective Payment System Claims. Special Billing Situations Involving Outcome & Assessment Information Set Assessments. Beneficiary-Driven Demand Billing Under Home Health Prospective Payment Systems.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 2002 Through June 2002]

Transmittal No.	Manual/subject/publication number
	No-Payment Billing and Receipt of Denial Notices Under Home Health Prospective Payment Systems.
	Billing and Payment for Medicare.
	Secondary Payer Claims Under the Home Health Prospective Payment System
301	Excluded Foot Care Services.
	Coverage Issues Manual (CMS Pub. 6) (Superintendent of Documents, No. HE 22.8/14)
152	Noncontact Normothermic Wound Therapy.
153	Services Provided for the Diagnosis and Treatment of Diabetic Sensory Neuropathy With Loss of Protective Sensation (Also Known as Diabetic Peripheral Neuropathy).
154	Medical Nutrition Therapy.
155	Intravenous Immune Globulins for the Treatment of Autiommune Mucocutaneous Blistering Diseases.
156	Home Prothrombin Time International Normalized Ratio Monitoring for Anticoagulation Management.
	Positron Emission Tomography Scans.
	Current Perception Threshold/Sensory.
	Nerve Conduction Threshold Test.
	Single Photo Emission Tomography—Covered.
	Provider Reimbursement Manual—Part 2 Provider Cost Reporting Forms and Instructions Chapter 33/Form CMS–216–94 (CMS Pub. 15–2–33)
2	Worksheet D.
3	Cost Report Forms.
	Kidney Placement Efforts—Documentation Requirements.
	Provider Reimbursement Manual—Part 2 Provider Cost Reporting Forms and Instructions Chapter 34/Form CMS–2540–96 (CMS Pub. 15–2–34)
6	Cost Report Forms Exhibit 1.
	Program Integrity Manual (CMS Pub. 83)
24	Medical Policy.
	National Coverage Determinations.
	Coverage Provisions in Interpretive Manuals.
	Local Medical Review Policy Articles.
	Individual Claim Determinations.
	When to Develop New/Revised Local Medical Review Policy.
	Content of a Local Medical Review Policy.
	Coding Provisions in Local Medical Review Policy.
	Documentation Provisions in Local Medical Review Policy.
	Least Costly Alternative.
	Use of Absolute Words in Local Medical Review Policy.
	Local Medical Review Policy Requirements That Alternative Service Be Tried First.
	Local Medial Review Policy Format.
	American Medical Association Current Procedural Terminology Copyright Agreement.
	Local Medical Review Policy Development.
	Process Development Process.
	Evidence Supporting Local Medical Review Policy.
	Local Medical Review Policy That Require a Comment and Notice Period.
	Local Medical Review Policy Comment and Notice Process.
	The Comment Period.
	Draft Local Medical Review Policy Web Site Requirements.
	The Notice Period.
	Final Local Medical Review Policy Web Site Requirements.
	The Local Medical Review Policy Advisory Committee.
	The Carrier Advisory Committee.
	Purpose of the Carrier Advisory Committee.
	Membership on the Carrier Advisory Committee.
	Role of Carrier Advisory Committee Members.
	Carrier Advisory Committee Structure and Process.
	Durable Medical Equipment Regional Carriers Advisory Process.
	Provider Education Regarding Local Medical Review Policy.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April 2002 Through June 2002]

Transmittal No.	Manual/subject/publication number
	Application of Local Medical Review Policy.
	Retired Local Medical Review Policy.
25	Types of Claims for Which Contractors Are Responsible.
26	Quality Issues in Skilled Nursing Facility and Referral to Other Agencies.
	Medicare/Medicaid Sanction—Reinstatement Report (CMS Pub. 69)
04–02	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—March 2002.
05–02	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—April 2002.
06–02	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—May 2002.

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

[April 2002 Through June 2002]

Publication date	FR Vol. 67 page	CFR part(s)	File code*	Regulation title
April 15, 2002	18216		CMS–0007–N	Health Insurance Reform: Standards for Electronic Transactions; Announcement of the Availability of a Model Compliance Plan.
April 15, 2002	18209		CMS–4042–N	Medicare Program; Solicitation for Proposals for Medicare Preferred Provider Organization (PPO) Demonstrations in the Medicare+Choice Program.
April 26, 2002	20804			Centers for Medicare & Medicaid Services (CMS), Statement of Organization, Functions, and Delegations of Authority.
April 26, 2002	20803		CMS–1215–N	Medicare Program; June 3, 2002, Meeting of the Practicing Physicians Advisory Council.
April 26, 2002	20802		CMS–4036–N	Medicare Program: Meeting of the Advisory Panel on Medicare Education—May 23, 2002.
April 26, 2002	20801		CMS–3097–N	Medicare Program; Meeting of the Medical and Surgical Procedures Panel of the Medicare Coverage Advisory Committee—June 12, 2002.
April 26, 2002	20800		CMS–4047–N	Medicare Program; Risk Adjustment Training, June 3–4, 2002, Las Vegas, NV; June 6–7, 2002, St. Louis, MO; June 10–11, 2002, Philadelphia, PA; and June 13–14, 2002, Orlando, FL.
April 26, 2002	20794		CMS–2137–N	State Children's Health Insurance Program (SCHIP); Redistribution and Continued Availability of Unexpended SCHIP Funds From the Appropriation for FY 1999.
April 26, 2002	20791		CMS–2149–N	Medicaid Program; Infrastructure Grants Program To Support the Design and Delivery of Long Term Services and Supports That Permit People of Any Age Who Have a Disability or Long Term Illness To Live in the Community.
April 26, 2002	20681		CMS–1169–CN	Medicare Program; Revisions to Payment Policies and Five-Year Review of and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 2002; Correction.
May 1, 2002	21617	42 CFR 414	CMS–1084–WN	Medicare Program; Payment for Upgraded Durable Medical Equipment; Withdrawal.
May 9, 2002	31403	42 CFR 405, 412, 413, 482, 485, 489.	CMS–1203–P	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2003 Rates.
May 17, 2002	35118		CMS–1215–N2	Medicare Program; June 3, 2002, Meeting of the Practicing Physicians Advisory Council.
May 24, 2002	36611		CMS–2141–PN	Medicare and Medicaid Programs; Application by the American Osteopathic Association (AOA) for Approval of Deeming Authority for Ambulatory Surgical Centers (ASCs).
May 24, 2002	36539	42 CFR Chap. IV and V	CMS–3088–FC	Office of Inspector General-Health Care; Medicare and Medicaid Programs; Peer Review Organizations: Name and Other Changes-Technical Amendments.

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

[April 2002 Through June 2002]

Publication date	FR Vol. 67 page	CFR part(s)	File code*	Regulation title
May 31, 2002	38128		CMS–1209–N	Medicare Program; Notice of Modification of Beneficiary Assessment Requirements for Skilled Nursing Facilities.
May 31, 2002	38009	45 CFR 160, 162	CMS–0047–F	Health Insurance Reform: Standard Unique Employer Identifier.
June 14, 2002	40989	42 CFR 400, 430, 431, 434, 435, 438, 440, 447.	CMS–2104–F	Medicaid Program; Medicaid Managed Care: New Provisions.
June 14, 2002	40988	42 CFR 400, 430, 431, 434, 435, 438, 440, 447.	CMS–2001–F4	Medicaid Program; Medicaid Managed Care.
June 24, 2002	42609	42 CFR 400, 430, 431, 434, 435, 438, 440, 447.	CMS–2104–F	Medicaid Program; Medicaid Managed Care: New Provisions.
June 28, 2002	43846	42 CFR 410, 414	CMS–1204–P	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2003.
June 28, 2002	43762		CMS–9880–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—Fourth Quarter, 1999 through First Quarter, 2002.
June 28, 2002	43632			Centers for Medicare & Medicaid Services (CMS), Statement of Organization, Functions, and Delegations of Authority.
June 28, 2002	43629		CMS–4023–FN	Medicare Program; Medicare+Choice Organizations—Approval of the Accreditation Association for Ambulatory Health Care, Inc. (AAAHC) for Medicare+Choice (M+C) Deeming Authority of M+C Organizations That Are Licensed as Health Maintenance Organizations (HMOs) or Preferred Provider Organizations (PPOs).
June 28, 2002	43616		CMS–1198–NC	Medicare Program; Update to the Prospective Payment System for Home Health Agencies for FY 2003.
June 28, 2002	43613		CMS–3082–NC	Medicare Program; Revised Evaluation Criteria for the End-Stage Renal Disease (ESRD) Networks.
June 28, 2002	43612		CMS–2154–PN	Medicare and Medicaid Programs; Application by the Joint Commission on Accreditation of Healthcare Organizations for Continued Deeming Authority for Ambulatory Surgical Centers.
June 28, 2002	43610		CMS–2155–PN	Medicare and Medicaid Programs; Application by the Accreditation Association for Ambulatory Health Care, Inc. for Continued Deeming Authority for Ambulatory Surgical Centers.
June 28, 2002	43555	42 CFR 414	CMS–1223–IFC	Medicare Program; Criteria for Submitting Supplemental Practice Expense Survey Data Under the Physician Fee Schedule.

*N=General Notice; PN=Proposed Notice; NC=Notice with Comment Period; FN=Final Notice; P=Notice of Proposed Rulemaking (NPRM); F=Final Rule; FC=Final Rule with Comment Period; CN=Correction Notice; IFC=Interim Final Rule with Comment Period; GNC=General Notice with Comment Period.

Addendum V—National Coverage Determinations (April 2002 Through June 2002)

A national coverage determination (NCD) is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Social Security Act, but does not include a determination of what code, if any, is assigned to a particular item or service covered under this title or determination with respect to the amount of payment made for a particular item or service so covered. We include below all of the NCDs that have been effective since June 28, 1999, the effective date of Medicare's new coverage process. Please note that because we order the NCDs by effective date, some of the decisions are dated later than June 2002, the terminus for most other information listed in this notice. The entries below include information concerning completed decisions as well as sections on program and decision memoranda, which also announce impending decisions or, in some cases, explain why it was not appropriate to issue a NCD. We identify completed decisions by title, effective date, and section of the publication where the decision can be found. Also, please note that in some cases more than one NCD was made affecting a single procedure. Information on completed decisions as well as pending decisions has also been posted on the CMS Web site at *http://www.hcfa.gov/coverage.*

NATIONAL COVERAGE DECISIONS FOR QUARTERLY NOTICES

[Coverage Issues Manual CMS Pub. 6]

Section	Title	Effective date
35–100	Photodynamic Therapy	August 20, 2002.
40–31	Intravenous Immune Globulin (IVIg) for the Treatment of Autoimmune Mucocutaneous Blistering Diseases.	October 1, 2002.
45–30	Photosensitive Drugs	August 20, 2002.
50–36	Positron Emission Tomography (PET) Scans	October 1, 2002.
50–57	Current Perception Threshold/Sensory Nerve Conduction Threshold Test	October 1, 2002.
50–58	Single Photon Emission Tomography	October 1, 2002.
50–59	Percutaneous Image-Guided Breast Biopsy	January 1, 2003.
80–3	Medical Nutrition Therapy	October 1, 2002.

[FR Doc. 02–24108 Filed 9–26–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grant to Child Trends

AGENCY: Family and Youth Services Bureau, Administration on Children, Youth and Families, ACF, DHHS

ACTION: Notice of award.

Catalog of Federal Domestic Assistance: #93.550.

SUMMARY: Notice is hereby given that a noncompetive grant award is being made to Child Trends, Inc., to support their efforts in the development of positive outcome measures for children and youth.

This one year project is being funded non-competitively because it is expected to provide immediate and useful information and guidance to this Department and other practitioners regarding positive outcome measures for early intervention programs, government indicator monitoring efforts and longitudinal research on healthy youth development. The field of youth services and policy is in significant need of consensus and clarity on ways of measuring positive inputs and outcomes, including definitions, valid data sources, methodological issues, *etc.* This is true particularly in areas impacting the population of youth in at-risk situations served by the Family and Youth Services Bureau.

This project will solicit and compile expert input from a variety of fields which affect young people, such as services to runaway and homeless youth, other social services, health, labor force preparation, juvenile justice and the like. Through a wide-ranging call for papers, a review of existing constructs, multidisciplinary consultations and scholarly analysis, the project will build a body of information and thinking which will then become the focus of a national conference of experts hosted by the National Institutes of Health.

One purpose of the conference will be to build consensus on a body of valid, logical, and practical indicators that reflect assets, strengths, and constructive experiences of youth, with particular emphasis on youth in at-risk situations such as being homeless or a runaway. An important focus is to relate these assets and factors to healthy outcomes among youth as they mature into adulthood. Interdisciplinary considerations are expected; for example, an evaluation of knowledge regarding the impact of outcomes in one field, such as education, upon outcomes in another area, such as health. Findings and recommendations of the conference will be disseminated through a variety of means.

The project builds upon Child Trends' depth of expertise and experience, including notable accomplishments in the field of analyzing and evaluating policy effects upon children and youth, particularly those in at risk situations. During the 1990's, Child Trends played a key role in a major study sponsored by the Department of Health and Human Services on the effects of mandatory welfare-to-work programs on children, youth and families placed at risk during the transition from AFDC to TANF. It should be noted that many runaway and homeless youth and those at risk for running away, come from economically stressed families and settings.

Child Trends' widely-recognized reputation, extensive efforts and longstanding leadership in the area of child and youth well-being indicator development will generate significant expert attention and ensure participation in the culminating conference in Spring 2003. The grantee will be awarded $100,000 for use during the project period, beginning September 30, 2002 and ending September 29, 2003.

Authority: This award will be made pursuant to 42 U.S.C. 5714–23(a) (section 343 (a) of the Runaway and Homeless Youth Act of 1999, as amended by Pub. L. 106–71), CFDA#93.550.

FOR FURTHER INFORMATION CONTACT: Deborah Yatsko, Administration on Children, Youth and Families, Family and Youth Services Bureau, 330 C Street SW, Room 2326, Washington, DC 20204, Phone: 202.690.7843.

Dated: September 23, 2002.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 02–24660 Filed 9–26–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notices of Award of Non-Competitive Grant

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Notice; opportunity to comment.

SUMMARY: Notice is hereby given that ACYF is considering awarding discretionary research grant funds without competition to Cornell University, Office of Sponsored Programs, 115 Day Hall, Ithaca, New York 14853, for up to $254,332 of Child Care and Development Block Grant funds in FY 2002. Pending the availability of Federal funds, and the continuing non-Federal support of the project from other sources, ACYF will award up to $254,526 of Child Care and Development Block Grant funds in FY 2003 and up to $245,543 in FY 2004. The project period will begin on September 30, 2002, and end on September 29, 2005. This award will provide Federal support for research to develop econometric models of the

child care industry and new strategies for finance and administration.

The proposed research project addresses many questions of relevance to the child care field, to ACF, and to the Child Care Bureau in particular. The project will fill a gap in the information currently available about child care as an economic sector in the U.S. economy and help build a new policy framework from the perspective of economic development. The project is comprised of three interrelated components:

- In the first component, researchers will explore how input/output modeling can be adapted to model the economic development impacts of the child care industry in different States and localities ranging from urban to rural in character. Challenges in estimating employment and productivity of the child care industry with its diverse mix of public, private and non-profit providers will be addressed, as will questions of how to value the economic role played by child care in enabling parents to work. This component will contribute to a better theoretical and empirical understanding of how child care contributes to the broader economy.
- The second component will focus on dissemination. Researchers will develop and test a web-based methodology that can be used by States and localities to measure the economic impact of the child care industry in their region. This tool will enable users to collectively build a national database (using state and local data) and begin to shape a picture of the early care and education industry as a whole.
- The third component of this project will be to monitor how states and cities use an economic development frame to craft new approaches to child care finance and administration. Investigators will track how state and local coalitions engage non-traditional partners (such as business leaders, economists, community developers, and bankers) in building new strategic alliances aimed at strengthening investments in child care.

The study has a strong research design and methodology, builds on a solid understanding of the current state of research in the child care field, and is led by an exceptionally experienced team of investigators. The data collected through this study will provide information urgently needed by policymakers in early education and welfare reform.

The study answers a call for needed research on economic models of child care expressed by researchers and policymakers in the most recent meeting of the Child Care Policy Research Consortium held in Washington, DC, on April 17–19, 2002, and the Annual Meeting of State Child Care Administrators held in Washington, DC, on July 31–August 2, 2002.

Cornell University and its sub-contractor Stoney Associates are in a unique position to carry out this work with highly qualified personnel, university facilities and in-kind resources. Together, they have laid the foundation for this project through previous economic impact research, outreach and participatory research, and evaluation and policy analysis.

- Cornell has started the collaborative planning and groundwork for the study through the Department of City and Regional Planning, the Department of Applied Economics, the Institute for Social and Economic Research (which provides access to social science data), and the Community and Rural Development Institute (which works with local and state policy makers on community development, outreach, and research).
- Stoney Associates is a nationally recognized consulting firm and leader in the area of early education and child care finance. Stoney Associates has excellent connections with State and local child care administrators, and is a founding partner in the Alliance for Early Childhood Finance, a national organization focused on developing new strategies for financing of child care in America.

Therefore, while the project will provide a substantial benefit in the child care field, ACF, and the Child Care Bureau in particular, the amount of ACF funding needed is minimal due to the work already completed or underway through other funding sources.

The Agency is providing members of the public, including qualified organizations that would be interested in competing for the funding, if a competition were held, an opportunity to comment on the planned action.

Statutory Authority: This award will be made pursuant to the Child Care and Development Block Grant Act of 1990 as amended (CCDBG Act); section 418 of the Social Security Act; Consolidated Appropriations Act, 2001 (Pub. L. 106–554). The Catalog of Federal Domestic Assistance is 93.647.

DATES: In order to be considered, comments on this planned action must be received on or before October 7, 2002.

ADDRESSES: Interested parties, including qualified organizations that would be interested in competing for the funding, if a competition were held, should write to: Karen Tvedt, Child Care Bureau, Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services, 330 C Street, SW., Room 2046, Washington, DC 20447; e-mail address: *ktvedt@acf.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Karen Tvedt, Child Care Bureau, at (202) 401–5130.

(Catalog of Federal Domestic Assistance Program Number 93.647, Child Care Research Discretionary Grants)

Dated: September 23, 2002.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 02–24658 Filed 9–26–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[ACF/ACYF/CB–2002–03]

Grants to the National Indian Child Welfare Association and the National Association of Counsel for Children

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Notice of awards.

SUMMARY: Notice is hereby given that ACYF will award grant funds without competition to the National Indian Child Welfare Association (NICWA) and the National Association of Counsel for Children (NACC). These grants are being awarded to unsolicited proposals that conform to the applicable program objectives, are within the legislative authorities, and propose activities that may be lawfully supported through grant mechanisms. Both applications are of outstanding and unique merit. Each activity presents an opportunity to produce meaningful, sustainable, and useful results in an area of significant interest to ACF.

The NICWA project will support a three year pilot project to collect data analogous to that collected by the National Child Abuse and Neglect Data System (NCANDS) in three Native American areas. Currently, there is no reliable information on the extent and nature of child abuse and neglect (CAN) in American Indian/Alaska Native Communities. Most American Indian tribes and Alaska Native corporations or villages, as sovereign nations, provide their own child protection services, and data from them are not part of any

national CAN data collection. NICWA proposes a demonstration pilot project to design and test a data collection system with six American Indian tribes and/or Alaska Native corporations and/or villages with effective recordkeeping systems. These entities will report CAN events to NICWANet, an interactive and accessible web-based network developed by NICWA (through a Technology Opportunities Program grant). NICWA will work with the National Child Abuse and Neglect Data System (NCANDS) contractor support team to assure that the data collected by NICWANet is compatible and could be submitted to NCANDS by the collecting entity.

NICWA also proposes to involve other stakeholders, such as the Bureau of Indian Affairs (BIA and the Indian Health Service (IHS), throughout the project to promote maximum utilization of the data. The goal of the pilot demonstration is to develop a model of a national tribal CAN reporting system. Participating tribes will receive stipends, hardware, software and technical assistance to develop competence and capacity for sustaining the data collection activity.

The NACC project will develop a pilot a certification program for attorneys who represent public child welfare clients or represent children in family or dependency courts. The NACC and the University of Michigan Law School proposed creating a national certification program for child welfare (CW) lawyers. Children in the CW system need competent representation for legal process to function smoothly and ensure their safety and permanence. Data show that children often are not well served in court, due in part to the lack of knowledgeable and well-trained attorneys with expertise in representing the child, the parent and the child welfare agency; and anecdotally, belief in the need for improved legal practice for children is widespread. To correct this problem, NACC proposed a system that measures competence and then certifies competent representatives to the courts and other potential employers. Child welfare law has become increasingly complex and specialized, as Federal legislation, such as the Adoption and Safe Families Act of 1997 and State laws have made child protection and foster care cases even more legally complicated. Lawyers, to be good advocates for children and effective in the courtroom, must understand the social and psychological implications of a case and what those mean developmentally for the child.

The American Bar Association (ABA) and the State Justice Institute (SJI) have recommended certification as a means of improving the quality of legal services for children. Certification will establish standards of professional competence (be competency based), provide a measure of effectiveness of lawyer training programs and improve the quality and efficiency of CW court cases through a process that is non-governmental, professionally driven and supported, and creates incentives for excellence. NACC has prepared its application to the ABA Standing Committee on Specialization to approve the certification program, as the ABA has approved certification programs in other specialties such as Bankruptcy, Trial Practice, Estate Planning, and Elder Law. This specialty would be ''Juvenile Law—Child Welfare.''

NACC proposes to identify and define lawyer competencies (*i.e.,* knowledge and skills), present the competencies in a manual, guide the development of training programs, and pilot a certifying examination. Evaluation and revision will be an integral part of the iterative process. NACC has submitted documentation of support for the American Academy of Adoption Attorneys, the ABA Center on Children and the Law, the SBA Standing Committee on Specialization, the National Council of Juvenile and Family Court Judges, and the National Institute of Trial Advocacy. Colorado, Michigan and New Mexico have offered to serve as pilot certification states. The program has every likelihood of being self-sustaining following development.

The project periods for both awards will be for 36 months, beginning September 30, 2002 and ending September 29, 2005. Each grantee will be awarded $200,000 for use during the first twelve months of the project period. The grantees may in the second and third years of the project periods be awarded additional noncompetitive continuation funding of up to $200,000 per year, each year, depending on the availability of funds, satisfactory performance by the grantee, and a determination that such continued funding would be in the best interest of the government.

Authority: These awards will be made pursuant to the Child Abuse Prevention and Treatment Act, 42 U.S.C. 5106 (CFDA 93.670) and the Promoting Safe and Stable Families program: Section 430 of title IV–B, Subpart 2, of the Social Security Act, as amended, 42 U.S.C. 629 (CFDA 93.556).

FOR FURTHER INFORMATION CONTACT: Sally Flanzer, Children's Bureau, Administration on Children, Youth and Families, 330 C Street, SW., Room 2429, Washington, DC 20447; Telephone: (202) 205–8914.

Dated: September 23, 2002.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 02–24657 Filed 9–26–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Award of Non-Competitive Grant

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Notice, opportunity to comment.

SUMMARY: Notice is hereby given that ACYF is considering awarding discretionary research grant funds without competition to the University of Washington, Evans School of Public Affairs, Human Services Policy Center, for up to $216,227 of Child Care and Development Block Grants funds in FY 2002. The project period would begin on September 30, 2002, and end on September 29, 203. This award will be made to the University of Washington to provide Federal support for a research project that will generate State-level estimates of the child care workforce.

The proposed research project addresses many questions of relevance to the child care field, to ACF, and to the Child Care Bureau. The project will provide the methodology and tools to measure the distribution and characteristics of the child care workforce, thereby contributing crucial information to public policy discussions and ultimately to improvement of services, leading to better outcomes for children and families. Child care workforce estimates are critical for determining the need for additional workers based on current demands as well as States' projections in terms of economic development, welfare reform, the education and training of child care providers, and alternative approaches to child care finance. The project is highly relevant to efforts by ACF, the Child Care Bureau and States to improve the quality of early learning opportunities in child care environments.

The project builds on a new workforce estimation model developed by the University of Washington's Human Services Policy Center in collaboration with the Center for the Child Care Work Force. This important and innovative work has generated extensive interest in the child care

policy research filed. In this new study, the investigators will apply and validate their model of the child care workforce by applying the methodology to selected States. Once the efficacy of the model has been validated, it can be used to produce workforce estimates for each of the 50 States and potentially, for sub-state regions.

The methodology will also provide an inexpensive way for States to continually update estimates of their child care workforce. State-estimates are important for several reasons. Major decisions concerning child care financing and quality-improvement are made by States; knowing the size of the current workforce will assist Stats in planing such initiatives. State-level workforce estimates can also be useful in validating national demand-based workforce, inconsistencies in type and availability of data preclude aggregating their estimates into national profiles. More uniformity and validity of State data will allow for aggregation across States to provide a better national picture of the U.S. child care workforce than is currently available. such estimates are needed to describe national trends, identify emerging needs, and guide future policy formulations.

Communities, using the tools developed through this project, will also be able to measure their own child are workforce characteristics, articulate the needs of their communities, and identify alternative policy and programmatic responses. Groups of communities with similar characteristics (such as rural areas or inner cities) will be able to ascertain workforce characteristics and needs that may be unique to these types of settings.

The University of Washington is in a unique position to carry out this work with highly qualified personnel, university facilities and in-kind resources. The Human Services Policy Center in the Evans School of Public Affairs is the original developer of this model and has completed the groundwork and planning for this next phase of validation and dissemination of the model to States and communities for their own use. The school has good capability for carrying out the work to a high degree of quality, for analyzing national and state-level trends, and for disseminating the model to the field.

The study has a strong research design and methodology, builds on a solid understanding of the current state of research in the child care field, and is lead by an exceptionally experienced team of investigators. The data collected through this study will provide information urgently needed by policymakers as we enter the next phase of early education and welfare reform.

The study answers a call for needed research on economic models of child care expressed by researchers and policymakers in the most recent meeting of the Child Care Policy Research Consortium held in Washington, DC, on April 17–19, 2002, and the Annual Meeting of State Child Care Administrators held in Washington, DC on July 31–August 2, 2002.

The Agency is providing members of the public, including qualified organizations that would be interested in competing for the funding, if a competition were held, and opportunity to comment on the planned action.

Statutory Authority: This award will be made pursuant to the Child Care and Development Block Grant Act of 1990 as amended (CCDBG Act); section 418 of the Social Security Act; Consolidated Appropriations Act, 2001 (Pub. L. 106–554). The Catalog of Federal Domestic Assistance is 93.647.

DATES: In order to be considered, comments on this planned action must be received on or before October 7, 2002.

ADDRESSES: Interested parties, including qualified organizations that would be interested in competing for the funding, if a competition were held, should write to: Karen Tvedt, Child Care Bureau, Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services, 330 C Street SW., Room 2046, Washington, DC 20447; e-mail address: *ktvedt@act.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Karen Tvedt, Child Care Bureau, at (202) 401–5130.

Catalog of Federal Domestic Assistance Program Number 93.647, Child Care Research Discretionary Grants.

Dated: September 23, 2002.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 02–24659 Filed 9–26–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Biological Response Modifiers Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Biological Response Modifiers Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held by teleconference on October 10, 2002, 5:30 p.m. to approximately 7:30 p.m.

Location: National Institutes of Health, Bldg. 29B, conference room C, 29 Lincoln Dr., Bethesda, MD. This meeting will be held by a telephone conference call. Members of the public attending the meeting may participate during the open session of the meeting.

Contact Person: Gail Dapolito or Rosanna L. Harvey, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12389. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 10, 2002, the committee will receive an update on individual research programs in the Division of Cell and Gene Therapies and the Division of Therapeutic Proteins.

Procedure: On October 10, 2002, from 5:30 p.m. to approximately 7 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 3, 2002. Oral presentations from the public will be scheduled between approximately 6 p.m. and 7 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 3, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On October 10, 2002, from approximately 7 p.m. to 7:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of a review of individual research programs

in the Center for Biologics Evaluation and Research.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gail Dapolito at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the October 10, 2002, Biological Response Modifiers Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Biological Response Modifiers Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 20, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–24605 Filed 9–26–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Urine Sediment DNA: Reproductive Status and Health Index.

Date: November 15, 2002.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd, Room 5B01, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892. (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: September 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24547 Filed 9–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group Biomedical Research and Research Training Review Subcommittee B.

Date: November 12–13, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Arthur L. Zachary, PhD, Scientific Review Administrator, Office of Science Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892. (301) 594–2886. *zacharya@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: September 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24548 Filed 9–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Improved Cell Counting Using the Optical Disector.

Date: October 29, 2002.

Time: 11 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd, Room 5B01, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5E01, Bethesda, MD 20892. (301) 496–1487. *anandr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for

Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: September 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24549 Filed 9–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Mentored Patient-Oriented Research Career Development Awards (K23s).

Date: November 15, 2002.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709. (Telephone Conference Call).

Contact Person: Linda K Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Centers for Population Health and Health Disparities.

Date: November 17–20, 2002.

Time: 7:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Governors Inn, 1–40 & Davis Dr., Exit 280, Research Triangle Park, NC 27709.

Contact Person: Sally Eckert-Tilotta, PhD, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. 919/541–1446. *eckertt1@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114 Applied toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: September 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24550 Filed 9–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Drug Abuse Special Emphasis Panel, September 24, 2002, 10 a.m. to September 24, 2002, 12 p.m., Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852 which was published in the **Federal Register** on August 27, 2002, Vol. 67, Number 166.

The date, time and location of the meeting has been changed to October 4, 2002, from 9 a.m. to 5 p.m. at the DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852. The meeting is closed to the public.

Dated: September 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24551 Filed 9–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Treatment Research.

Date: October 8, 2002.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St., NW, Washington, DC 20037.

Contact Person: Mark R. Green, PhD, Chief, CEASRB, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Room 3158, MSC 9547, 6001 Executive Boulevard, Bethesda, MD 20892–9547. (301) 435–1431.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development.

Date: November 14, 2002.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Khursheed Asghar, PhD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Room 3158, MSC 9547, 6001 Executive Boulevard, Bethesda, MD 20892–9547. (301) 443–2620.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: September 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24552 Filed 9–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, National Research Service Award Institutional Training Grants.

Date: October 21, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20817.

Contact Person: John E. Richters, PhD, Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Room 715, Bethesda, MD 20817. (301) 594–5971. *jrichters@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24553 Filed 9–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: October 22–23, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20817.

Contact Person: John E. Richters, PhD, Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Room 715, Bethesda, MD 20817. (301) 594–5971. *jrichters@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24554 Filed 9–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personnel information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Lung Biology and Pathology Study Section.

Date: October 7–8, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Westin Grand Hotel, 2350 M Street, NW., Washington, DC 20037–1417.

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818 Bethesda, MD 20892. (301) 435–0696. *george_barnas@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dermatology and Rheumatology SBIRs.

Date: October 8, 2002.

Time: 10:30 am to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892. 301/435–1776. *davidsoh@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Immunological Sciences Integrated Review Group, Immunobiology Study Section, Immunology.

Date: October 10–11, 2002.

Time: 8:30 am to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Westin Grand Hotel, 2350 M Street, NW., Washington, DC 20037–1417.

Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892. (301) 435–1223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Social Psychology, Personality, and Health Behavior (SPHB).

Date: October 17–18, 2002.

Time: 8:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892. (301) 435–1258. *micklinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, R01 Applications.

Date: October 17–18, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW., Washington, DC 20007.

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892. (301) 435–1023. *steinberm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Synaptic biochemistry, neurosecretion, neuronal cell biology, cytoskeleton, and protein and membrane trafficking.

Date: October 17–18, 2002.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radison Barcelo Hotel, 2121 P. Street, NW, Washington, DC 20037.

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892. (301) 435–1251. *bannerc@drg.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Growth factors.

Date: October 18, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892. (301) 435–1716. *strudlep@csr.nih.gov*.

Name of Committee: Oncological Sciences Integrated Review Group, Metabolic Pathology Study Section.

Date: October 20–22, 2002.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Premiere Hotel, 8661 Leesburg Pike, Vienna, VA 22182.

Contact Person: Angela Y. Ng, MBA, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892–7804. (301) 435–1715. *nga@csr.nih.gov*.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular and Rental Study Section.

Date: October 21–22, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review National Institutes of Health, 6701 Rockledge Dr., Rm. 4128, MSC 7814, Bethesda, MD 20892. (301) 435–1850. *dowellr@csr.nih.gov.*

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Reproductive Biology Study Section.

Date: October 21–22, 2002.

Time: 8 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892. (301) 435–1044.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ALTX–4 02 Review of conflict applications.

Date: October 21, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, Dupont Room, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Rass M. Shayiq, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892. (301) 435–2359. *shayiqr@csr.nih.gov*.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Reproductive Endocrinology Study Section.

Date: October 21–22, 2002.

Time: 8 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Courtyard By Marriott, 805 Russell Avenue, Gaithersburg, MD 20879.

Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892. (301) 435–1042.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–W 01M:Member conflict:Surgery, Anesthesiology & Trauma.

Date: October 21, 2002.

Time: 8 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892. (301) 435–1174. *dhindsad@csr.nih.gov.*

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Human Embryology and Development Subcommittee 1.

Date: October 21–22, 2002.

Time: 8 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892. (301) 435–1046.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skeletal Muscle Biology.

Date: October 21–22, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 24th Street, NW., Washington, DC 20037.

Contact Person: Paul D. Wagner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892. (301) 435–6809. *wagnerp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–ALTX–1 (02): Member Conflict: Lung Biology and Respiratory Physiology.

Date: October 21, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: Patricia Greenwel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892. (301) 435–1169. *greenwep@csr.nih.gov.*

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Geriatrics and Rehabilitation Medicine.

Date: October 21–22, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892. (301) 435–1786.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Physical Biochemistry Study Section.

Date: October 21–22, 2002.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 515 Pooks Hill Rd., Bethesda, MD 20814.

Contact Person: Gopa Rakhit, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892. (301) 435–1721. *rakhitg@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 4, Cognition and Perception.

Date: October 21–22, 2002.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036–3305.

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892. (301) 435–1261.

Name of Committee: Nutritional and Metabolic Sciences Integrated Review Group, Nutrition Study Section.

Date: October 21–22, 2002.
Time: 8:30 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Sooja K. Kim, PhD, RD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7892, Bethesda, MD 20892. (301) 435–1780.

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 6, Developmental Disabilities and Child Psychopathology.
Date: October 21–22, 2002.
Time: 9 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Hotel Durant, 2600 Durant Avenue, Berkeley, CA 94704.
Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892. (301) 435–1260.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–W 03M: Member Conflict: Surgery, Anesthesiology & Trauma.
Date: October 21, 2002.
Time: 11 am to 12 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892. (301) 435–1174. *dhindsad@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SMB (10) B: Small Business Skeletal Muscle.
Date: October 21, 2002.
Time: 5 pm to 6:30 pm.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.
Contact Person: Paul D. Wagner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892. (301) 435–6809. *wagnerp@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 7.
Date: October 23–24, 2002.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Radison Barcelo Hotel, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892. (301) 435–1178. *fujiij@drg.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SNEM–5 05M Member Conflict: Population Studies.
Date: October 23, 2002.
Time: 2 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892. (301) 435–0695. *hardyan@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–24555 Filed 9–26–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Evaluation of the CSAP Underage Drinking Prevention Public Education Program

—New—SAMHSA's Center for Substance Abuse Prevention (CSAP) is launching the Underage Drinking Prevention Public Education Program, which is a public education program designed to educate 9–13 year old children about the harms of alcohol use and to support parents/caregivers as they monitor and participate in their children's activities. The ultimate goal of the program is to reduce underage alcohol use among young people. Elements of the program include media messages (such as public service announcements on television and radio) and education of children and their adult caregivers through materials and community events.

To determine the likely effectiveness of the program, CSAP is planning to conduct an evaluation. The evaluation will determine whether the program can produce measurable change in communities that receive training and technical assistance on implementing the program, plus funds to customize materials for those communities. The evaluation will assess change in knowledge, attitudes, and behavior among those exposed to the program. Ten treatment and five comparison communities will be selected for study. Data for the evaluation will be collected through a baseline telephone survey and through four follow-up telephone surveys of adult-child dyads. The estimated response burden is shown in the table that follows.

Data collection	Number of respondents	Frequency of response	Hours per response	Total response burden (hrs.)
Baseline telephone survey of adult-child dyads	12,600 adults	1	0.2	2,520
	3,780 adults[a]	1	0.2	756
	12,600 youth	1	0.2	2,520
Parent-only interviews[b]	630 adults	1	0.2	126
Years 1–4 follow-up telephone survey of adult-child dyads.	12,000 adults	4	0.2	9,600
	3,600 adults[a]	4	0.2	2,880
	12,000 youth	4	0.2	9,600
Parent-only interviews	600 adults	4	0.2	480

Data collection	Number of respondents	Frequency of response	Hours per response	Total response burden (hrs.)
State department of education	10	1	0.25	3
Local school district	15	1	0.25	4
School principal	60	1	0.25	15
School contact	60	2	0.5	60
Total	25,345			28,564
4-yr. annual average	25,236			7,141

[a] The parent interview is 12 minutes long and the child interview is 12 minutes long. The burden estimates assume that 30% of parents interviewed stay on the telephone to monitor the child's interview and that the remainder of parents do not.
[b] This number represents an estimated 5% of adult respondents who complete the parent interview but decline to have the child interviewed.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 23, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–24580 Filed 9–26–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–39]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (this is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency (Area-MI), Bolliing Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office

of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: September 19, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 9/27/02

Suitable/Available Properties

Buildings (by State)

Louisiana

Federal Building
200 South Union Street
Opelousas Co: St. Landry Pr LA 70570—
Landholding Agency: GSA
Property Number: 54200230014
Status: Surplus
Comment: 41,886 sq. ft., most recent use—courthouse/post office/federal building, portion occupied
GSA Number: 7–G–LA–0566

Missouri

Columbia Federal Ofc. Bldg.
608 Cherry Street
Columbia Co: Boone MO 65201–7712
Landholding Agency: GSA
Property Number: 54200230016
Status: Surplus
Comment: 30,609 sq. ft., needs rehab, most recent use—office
GSA Number: 7–C–MO–633

Unsuitable Properties

Buildings (by State)

California

Bldg. PH11
Naval Base
Port Hueneme Co: Ventura CA 93042–5000
Landholding Agency: Navy
Property Number: 77200230045
Status: Unutilized
Reason: Extensive deterioration

Bldg. 37
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311—
Landholding Agency: Navy
Property Number: 77200230046
Status: Unutilized
Reason: Extensive deterioration

Bldg. 115
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311—
Landholding Agency: Navy
Property Number: 77200230047
Status: Unutilized
Reason: Extensive deterioration

Bldg. 117
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311—
Landholding Agency: Navy
Property Number: 77200230048
Status: Unutilized
Reason: Extensive deterioration

Bldg. 557
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311—
Landholding Agency: Navy
Property Number: 77200230049
Status: Unutilized
Reason: Extensive deterioration

Hawaii

13 Administrative Facilities
Johnston Atoll Airfield
Honolulu Co: HI
Landholding Agency: Air Force
Property Number: 18200230019
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone

7 Bunkers
Johnston Atoll Airfield
Honolulu Co: HI–
Landholding Agency: Air Force
Property Number: 18200230020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material within airport runway clear zone

64 Storage Igloos
Johnston Atoll Airfield
Honolulu Co: HI–
Landholding Agency: Air Force
Property Number: 18200230021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material within airport runway clear zone

38 Quarters
Johnston Atoll Airfield
Honolulu Co: HI–
Landholding Agency: Air Force
Property Number: 18200230022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material within airport runway clear zone

108 Misc. Facilities
Johnston Atoll Airfield
Honolulu Co: HI–
Landholding Agency: Air Force
Property Number: 18200230023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material within airport runway clear zone

5 Outer Island Bldgs.
Johnston Atoll Airfield
Honolulu Co: HI–
Landholding Agency: Air Force
Property Number: 18200230024
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material within airport runway clear zone

37 Shops
Johnston Atoll Airfield
Honolulu Co: HI–
Landholding Agency: Air Force
Property Number: 18200230025
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material within airport runway clear zone

46 Warehouses
Johnston Atoll Airfield
Honolulu Co: HI–
Landholding Agency: Air Force
Property Number: 18200230026
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material within airport runway clear zone

Maryland

Stillpond Station
Coast Guard Station
Stillpond Neck Road
Worton Co: Kent MD 21678–
Landholding Agency: GSA
Property Number: 54200230015
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 4–U–MD–607

Michigan

Bldg. 550
Selfridge Outer Marker Site
Selfridge ANGB Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18200230017
Status: Unutilized
Reason: Extensive deterioration

Facilities 90004, 911146
Selfridge Outer Marker Site
Selfridge ANGB Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18200230018
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230027
Status: Unutilized
Reason: Secured Area

Bldgs 10, 15
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230028
Status: Unutilized
Reason: Secured Area

Bldgs 31, 33, 38
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230029
Status: Unutilized
Reason: Secured Area

Bldg. 44
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230030
Status: Unutilized
Reason: Secured Area

Bldg. 53
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230031
Status: Unutilized
Reason: Secured Area

Bldg. 219
Alpena CRTC
Alpena Co: MI 49707–

Landholding Agency: Air Force
Property Number: 18200230032
Status: Unutilized
Reason: Secured Area

Bldg. 302, 304, 305
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230033
Status: Unutilized
Reason: Secured Area

Bldg. 321
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230034
Status: Unutilized
Reason: Secured Area

Bldgs. 330–333
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230035
Status: Unutilized
Reason: Secured Area

Bldgs. 402, 414
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230036
Status: Unutilized
Reason: Secured Area

Bldg. 4020
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230037
Status: Unutilized
Reason: Secured Area

Mississippi

Bldg. QQ
Naval Station
Pascagoula Co: Jackson MS 39595–
Landholding Agency: Navy
Property Number: 77200230050
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Puerto Rico

Bldg. 90
U.S. Naval Base
Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77200230051
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 371
U.S. Naval Base
Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77200230052
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration

Bldg. 803
U.S. Naval Base
Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77200230053
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration

Bldg. 1028
U.S. Naval Base
Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77200230054
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1583
U.S. Naval Base
Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77200230055
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Tennessee

Bldg. 5
Navy Surface Warfare
Memphis Co: Shelby TN 38113–
Landholding Agency: Navy
Property Number: 77200230056
Status: Unutilized
Reason: Secured Area

Bldg. 11
Navy Surface Warfare
Memphis Co: Shelby TN 38113–
Landholding Agency: Navy
Property Number: 77200230057
Status: Unutilized
Reason: Secured Area

Washington

Bldg. 530
Naval Station
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200230058
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 878
Naval Station
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200230059
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 904
Naval Station
Fort Lawton
Everett Co: Snohomish WA 98207–5001
Landholding Agency: Navy
Property Number: 77200230060
Status: Excess
Reason: Extensive deterioration

[FR Doc. 02–24397 Filed 9–26–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4768–C–02]

Notice of Funding Availability for Revitalization of Severely Distressed Public Housing; HOPE VI Revitalization Grants, Fiscal Year 2002; Notice of Extension of Application Deadline

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants, Notice of Extension of Application Deadline.

SUMMARY: This notice extends, for one week, the application due date for HUD's Fiscal Year (FY) 2002 Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants.

DATES: *Application Due Date.* Revitalization grant applications are due to HUD Headquarters on or before 5:15 p.m., Eastern Time, on December 6, 2002.

FOR FURTHER INFORMATION CONTACT: Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll free numbers). Persons with hearing- or speech-impairments may call via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On July 31, 2002 (67 FR 49766), HUD published its Fiscal Year (FY) 2002 Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants (HOPE VI NOFA), which announced the availability of approximately $492.5 million in FY 2002 funds for the HOPE VI Revitalization Program. The July 31, 2002 HOPE VI NOFA provided an application due date of November 29, 2002. Because November 29, 2002, falls on the Friday after the Thanksgiving holiday, HUD is extending the application due date under the July 31, 2002 HOPE VI NOFA for one week. Grant applications under the July 31, 2002 HOPE VI NOFA are now due to HUD Headquarters on or before 5:15 p.m., Eastern Time, on Friday, December 6, 2002. Except for this change in the application due date, all other requirements of the July 31, 2002 HOPE VI NOFA remain unchanged.

Dated: September 20, 2002.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–24620 Filed 9–26–02; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Togiak National Wildlife Refuge; Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice, information collection.

The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork reduction Act of 1995 (Public Law 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and record keeping activities (see 5 CFR 1320.8(d)). We will submit a request to OMB to approve the collection of information for preserving the unwritten knowledge (oral history) of the long-term residents of the southwest Alaska region in the vicinity of the Togiak National Wildlife Refuge. We are requesting a 3-year term of approval of this new information collection activity. Pursuant to our request for OMB approval of this new information collection, we invite comments on (1) whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of burden, including the validity of the methodology and assumptions used, and (3) ways to enhance the quality, utility, and clarity of the information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The proposed information collection form follows. A copy of the complete draft study proposal is available upon request at no cost. Direct requests to Patricia McClenahan, Office of Subsistence Management, 907/786–3888, extension 3875.

QUESTIONNAIRE/CHECKLIST—SPECIES LIST

Togiak NWR TEK Study Species Check List.

Species Group or Species

Fish
Salmon
- King
- Sockeye
- Chum
- Coho
- Pink

Char
- Dolly Varden
- Arctic Char
- Lake Trout

Resident Freshwater
- Arctic Grayling
- Rainbow Trout
- Northern Pike
- Blackfish
- Burbot
- Whitefish
- Round
- Humpback
- Sculpin
- Stickleback

Marine
- Herring
- Flat—fishes
- Cod
- Smelt
- Capelin

Marine Mammals
- Walrus
- Seals
- Harbor/Spotted
- Ringed
- Ribbon
- Bearded
- Sea Lions

Whales
- Belukha
- Gray

Land Mammals
- Brown Bear
- Black Bear
- Porcupine
- Tundra Hare
- Snowshoe Hare

Furbearers
- Beavers
- Muskrats
- Land Otters
- Wolverine
- Weasels
- Minks
- Marten
- Lynx
- Wolves
- Coyote
- Red Fox
- Parka Squirrels

Ungulates
- Moose
- Caribou
- Reindeer
- Misc:
- Sheep
- Goats
- Sheep

Birds
Resident
- Ptarmigan
- Grouse

Waterfowl
Geese
- White fronted
- Canada
- Brant
- Emperor
- Snow

Seabirds
Raptors
Others
- Cormorants
- Magpies
- Ravens

Vegetation
- Berries
- Salmon
- Huckle
- Blue
- Black
- Grasses
- Firewood

Vegetation types and changes
- spruce
- cotton woods
- alder
- willow

Togiak NWR TEK Interview Questionnaire (checklist)

For each species a respondent has knowledge of that they are willing to share this will serve as a guideline a checklist for initial and follow up interviews.

1 a. Describe your annual seasonal activities. (From the life stages interview complete a general description of their seasonal subsistence activities—what species they rely on most and when they target them).

b. How has this changed over time?

2 a. Where does [species] occur ? (mapping exercise)

b. Special concentrations? (staging, nesting, feeding, haul out, spawning?)

c. Have you observed changes over time?

d. Are there indicators/predictors that involve this species? (Either this species as an indicator or other things that provide predictions about this species)

3 a. Where and when does harvest occur? (mapping/access/timing)

b. Has this changed over time?

4 a. What methods are used for harvest and processing this species?

b. Has this changed over time?

5 a. Have you observed any changes in this animals behavior or abundance over time?

b. Have you observed any changes in response to human harvest methods changes?

c. Do you have solutions/recommendations for changes to management strategies or regulations to improve or address increases/decreases observed in this species?

6 a. With whom do you share your subsistence resources?

b. How has this changed over time?

7 a. How did you pass along your subsistence knowledge & skills to your children/grandchildren or others in the community?

8 a. When did you first recall that non-residents came to this area to access these resources?

9 a. What environmental, physical or climatological changes have you observed?

10 a. What species occur now that didn't before?

b. What species used to occur (be plentiful), but are no longer?

DATES: Comments must be submitted on or before November 26, 2002.

ADDRESSES: Regional Anthropologist, Bristol Bay Region; Coastal Regions Division; U.S. Fish and Wildlife Service Office of Subsistence Management; 3601 C Street, Suite 1030; Anchorage, AK 99503. Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224–ARLSQ, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Patricia McClenahan, Office of Subsistence Management, 907/786–3888 x. 3875, or Anissa Craghead, Service Information Collection Clearance Officer 703/358–2287.

Title: Oral History and Traditional Knowledge Gathering within Togiak National Wildlife Refuge.

Aaron Archibeque,

Refuge Manager, Togiak National Wildlife Refuge.

[FR Doc. 02–24587 Filed 9–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by University of Pennsylvania Museum of Archaeology and Anthropology professional staff in consultation with representatives of the Native Village of Kotzebue.

In 1895, human remains representing one individual were removed from an unknown location on Choris Peninsula in Kotzebue Sound, AK, by Mr. Benjamin Sharp. Mr. Sharp collected these human remains for the Academy of Natural Sciences, Philadelphia, PA, and in 1997, the human remains were transferred from the Academy of Natural Sciences to the University of Pennsylvania Museum of Archaeology and Anthropology. No known individual was identified. No associated funerary objects are present.

Museum documentation and published sources describe the human remains as ''Eskimo'' and date them to the 19th century. Published sources and consultation information indicate that the Native Village of Kotzebue, which is represented by Kotzebue IRA government, occupied the area where the human remains were recovered during the 19th century.

Based on the above-mentioned information, officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of Pennsylvania Museum of Archaeology and Anthropology also have determined that pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Native Village of Kotzebue.

This notice has been sent to officials of the Native Village of Kotzebue, the Kikiktagruk Inupiat Corporation, and the NANA Regional Corporation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Jeremy Sabloff, the Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 33rd and Spruce Streets, Philadelphia, PA 19104-6324, telephone (215) 898-4051, fax (215) 898-0657, before October 28, 2002. Repatriation of the human remains to the Native Village of Kotzebue may begin after that date if no additional claimants come forward.

Dated: August 8, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–24625 Filed 9–26–02; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–406]

Certain Lens-Fitted Film Packages; Completion of Remand; Notice of Institution of Further Enforcement Proceedings

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has completed its proceedings in response to the remand from the U.S. Court of Appeals for the Federal Circuit in *Jazz Photo Corporation et al.* v. *U.S. International Trade Commission,* 264 F.3d 1094 (Fed. Cir. 2001), and has determined to institute further enforcement proceedings as to Jazz Photo Corp. (Jazz) and two individuals associated with Jazz.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., telephone 202–205–3104, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol.public.* Hearing-impaired persons are advised

that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 25, 1998, based on a complaint by Fuji Photo Film Co., Ltd. (Fuji) of Tokyo, Japan, alleging unfair acts in violation of section 337 of the Tariff Act of 1930 by several respondents in the importation and sale of certain lens-fitted film packages (*i.e.*, disposable cameras) that infringed one or more claims of 15 patents held by complainant Fuji. 63 FR 14474 (March 25, 1998). On June 2, 1999, the Commission terminated the investigation, finding a violation of section 337 by all the respondents by reason of infringement of various claims of all 15 patents. 64 FR 30541 (June 8, 1999). The Commission issued a general exclusion order prohibiting the importation of LFFPs that infringe any of the claims of the patents at issue, and issued twenty cease and desist orders to domestic respondents.

Respondents Jazz, OptiColor Inc., and Dynatec International Inc. (Dynatec) appealed the portion of the Commission's determination that concerned refurbished LFFPs that were sold by or under license from Fuji, to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). The portion of the Commission's determination that concerned newly-manufactured LFFPs was not appealed. On August 21, 2001, the Federal Circuit issued its opinion, affirming-in-part, reversing-in-part, and remanding the Commission's determination. *Jazz Photo Corporation et al.* v. *U.S. International Trade Commission,* 264 F.3d 1094 (Fed. Cir. 2001).

On November 21, 2001, the Federal Circuit issued its mandate in the investigation, thereby returning jurisdiction over the investigation to the Commission. The Commission solicited comments from the parties concerning the action that the Commission should take on remand. On January 11, 2002, Jazz, Fuji, Grandway USA, the successor in interests to Dynatec, and the Commission investigative attorney (IA) filed comments. Fuji filed amended comments on January 16, 2002. Fuji, Jazz, Grandway, and the IA filed response comments on January 25, 2002. On February 6, 2002 Jazz filed a petition to the Supreme Court for a writ of certiorari of a portion of the Jazz decision. On March 13, 2002, Fuji filed a cross petition for a writ of certiorari. On June 24, 2002, the Supreme Court denied both petitions. The Federal Circuit's remand to the Commission concerned a motion filed by Fuji with the Federal Circuit on May 4, 2001. In that motion Fuji requested: (1) A modification of the stay orders to increase the bonds imposed on Dynatec and Jazz (an issue that became moot when the court lifted the stays that it had put in place pending appeal), and (2) an order prohibiting circumvention of Commission's orders by Grandway.[1] Fuji raised the same issues that it raised in the May 4, 2001 motion to the Federal Circuit in a complaint for enforcement proceedings that it filed with the Commission on June 27, 2001. After negotiations, Fuji and Grandway entered a Stipulated Agreement (SA) on July 19, 2001, which Fuji filed with the Commission on July 20, 2001. In filing the SA with the Commission, Fuji stated that it was withdrawing the allegations that it made against Grandway because the matters complained of in the enforcement complaint were now moot. In view of the SA between Fuji and Grandway and Fuji's statement to the Commission in withdrawing its enforcement complaint against Grandway, the Commission determined that the issues remanded to the Commission by the Federal Circuit in the Jazz decision are moot. Fuji also requested that the Commission consider its amended ''Response to the Commission's Notice of Request for Comments,'' dated January 16, 2002, as an enforcement complaint against Jazz and two individuals associated with Jazz. The Commission having found that Fuji's filing complies with the requirements for institution of a formal enforcement proceeding, determined to institute formal enforcement proceedings to determine whether Jazz and the two named individuals are in violation of the Commission's general exclusion order and/or cease and desist order issued in the investigation, and what if any enforcement measures are appropriate.

The following were named as parties to the formal enforcement proceeding: (1) Complainant Fuji Photo Film Co., Ltd; (2) Jazz Photo Film Co., (3) Jack Benun, Principal Consultant of Jazz (4) Anthony Cossentino, President of Jazz, (5) and a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337 and Commission rule 210.75, 19 CFR 210.75.

Issued: September 24, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–24661 Filed 9–26–02; 8:45 am]

BILLING CODE 7020–02–P

[1] As noted, Grandway is the successor in interest to Dynatec.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Application for Replacement Naturalization/Citizenship Document; Form N–565.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until November 26, 20002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection: Extension of a previously approved collection.*

(2) *Title of the Form/Collection:* Application for Replacement Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the*

Department of Justice sponsoring the collection: Form N–565. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used to apply for a replacement of a Declaration of Intention, Naturalization Certificate, Certificate of Citizenship or Repatriation Certificate, or to apply for a special certificate of naturalization as a U.S. citizen to be recognized by a foreign country.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 22,567 responses at 55 minutes (.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 20,671 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: September 23, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–24627 Filed 9–26–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: The Student and Exchange Visitor Information Systems (SEVIS).

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The INS published a notice in the **Federal Register** on May 16, 2002 at 67 FR 34956. The notice allowed for a 60-day public review and comment period on the extension of a currently approved information collection. No public comments were received on this information collection. The information collection was granted temporary approval by OMB (with terms) on June 27, 2002 and assigned an approval number of 1115–0252 with an expiration date of December 31, 2002. The INS now requests a 3-year extension of the currently information collection.

The purpose of this notice is to allow an additional 30 days for public comments to satisfy the requirements of the Paperwork Reduction Act for an extension of this information collection for a period not to exceed three years. Comments are encouraged and will be accepted until October 28, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* The Student and Exchange Visitor Information System.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–30); Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This system will be used by institutions and sponsors to provide notification, reports, updates, and data required by regulations on the institution and program, as well as on student and exchange visitors. Additionally the Service and the Department of State will use SEVIS to adjudicate benefits and services, track student and exchange visitor data, and to monitor institution and program sponsor compliance with current regulations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 625,135 applicants and 5 responses at 20 minutes (.333 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,040,850 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291. Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D

Street, NW., St. 1600, Washington, DC 20530.

Dated: September 23, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–24626 Filed 9–26–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: LIFE Legalization Supplement to Form I–485 Instructions; Form I–485D.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in an interim rule INS No. 2115–01 in the **Federal Register** on June 1, 2001 at 66 FR 29661, allowing for a 60-day public review and comment period. In response to public comments received and upon further review by the INS, the fee for this information collection has been lowered to $255. The INS is now requesting a 3-year extension on the currently approved information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 28, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and Clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* LIFE Legalization Supplement to Form I–485 Instructions.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–485 Supplement D. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form may be used by certain class action participants applying for adjustment of status pursuant to Pub. L. 106–553 and 8 CFR 245(a). The information collected on this form, in combination with the data collected on Form I–485, will be used by the Service to determine eligibility for the requested benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 400,000 responses at approximately one (1) hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 400,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20004.

Dated: September 23, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–24628 Filed 9–26–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Memorandum of Understanding to Participate in an Employment Eligibility Confirmation Pilot Program.

The Department of Justice (DOJ), Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** at 67 FR 35592 on May 20, 2002, allowing for a 60-day public review and comment period. No comments were received by the INS.

The purpose of this notice is to allow for an additional 30 days for public comment until October 28, 2002. This process if conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Office, 725—17th Street SW., Suite 10102, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Memorandum of Understanding to Participate in an Employment Eligibility Confirmation Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No agency form number; File No. OMB–18, SAVE Program, Immigration and Naturalization Service, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals or households. Employers election to participate in a pilot will execute a Memorandum of Understanding with the Immigration and Naturalization Service and the Social Security Administration (if applicable) that provides the specific terms and conditions governing the pilot and company information for each site that will be performing employment verification queries.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 responses at 1 hour and 35 minutes (1.538 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 7,915 hours annually.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, Director, Regulations an Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, 415 I Street, NW., Room 4034, Washington, DC 20536; (202) 514–3291. Comments and suggestions regarding items contained in this notice especially regarding the public burden and associated response time may also be directed to Richard A. Sloan.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street, NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: September 23, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–24629 Filed 9–26–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 12, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 219–8904 or e-mail *Howze-Marlene@dol.gov*).

Comments should be set to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: bureau of Labor Statistics (BLS).

Title: Mass Layoff Statistics Program.

OMB Number: 1220–0090.

Affected Public: Business or other for-profit, Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Frequency: Quarterly and Monthly.

Number of Respondents: 23,053.

Number of Annual Responses: 23,848.

Estimated Time Per Response: 60 minutes for SESAs and 20 minutes for employers.

Total Burden Hours: 81,547.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Clause (iii) of Section 309(2)(15)(a)(1)(A) of Pub. L. 105–220, the Workforce Investment Act (WIA), states that the Secretary of Labor shall oversee the development, maintenance, and continuous improvements of the incidence of, industrial and geographical location of, and number workers displaced by, permanent layoffs and plant closings. The information collected and compiled in the Mass Layoff Statistics (MLS) program uses a standardized, automated approach to identify, describe, and track the impact of major job cutbacks. It utilizes, to the greatest degree possible, existing Unemployment Insurance (UI) records and computerized data files, supplemented by direct employer contact. Such data are used by Congress, the Executive Branch, the business, labor and academic communities, SESAs, and the U.S. Department of Labor for both macro- and microeconomic analysis, including specific labor market studies geared towards manpower assistance and development. There is no other comprehensive source of statistics on either establishments or workers affected by mass layoffs, and plant closings; therefore, none of the aforementioned data requirements could

be fulfilled if this data collection did not occur.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–24499 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

September 19, 2002.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval is requested by October 1, 2002. A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 or e-mail: *king–darrin@dol.gov.*

Comments and questions about the ICR listed below should be submitted to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316). Comments must be received by September 30, 2002. The Office of Management and Budget is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate for the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarify of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Agency: Women's Bureau.

Title: The National Survey of Attitudes Regarding Comp Time and Balancing Work and Family.

OMB Number: 1225–ONEW.

Frequency: One time.

Affected Public: Individuals or household.

Number of Respondents: 1,000.

Annual Responses: 1,000.

Estimated Time for Response: 6 minutes.

Total Burden Hours: 100.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: Many indicators suggest that the world is a very different place now a little over a year past the tragedy of 9–11. Many Americans are focusing more on their emotional relationships with family and friends and have a desire to do a better job balancing their work and family lives.

Both President George W. Bush and Secretary of Labor Elaine L. Chao support the modernization of the 1938 Fair Labor Standards Act (FLSA). By updating the FLSA, private sector workers would have the opportunity to choose one and one-half hours of compensatory time (comp time) for every hour of overtime pay to help them balance their work and family responsibilities.

This short telephone survey will collect information from a random sample of 1,000 adults in the American workforce to understand their opinions regarding the need for, and their success in balancing work and family responsibilities, and their potential desire to have the option of comp time in lieu of overtime pay. The collected information will be used by the Department of Labor and Congress to help make decisions regarding changes in legislation that would offer greater flexibility to employers and employees.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–24500 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Treasury

Submission for OMB Emergency Review; Comment Request

September 18, 2002.

The Department of Labor has submitted the following (see below) information collection requests (ICRs), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by October 9, 2002. A copy of these ICRs, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 or e-mail: *king-darrin@dol.gov.*

Comments and questions about the ICRs listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Room 10235, Washington, DC 20503. Comments are requested by October 8, 2002. The Office of Management and Budget is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Agency: Employment and Training Administration (ETA).

Titles: Customer Survey and TAA Customer Survey (OMB No. 1205–0190); Business Confidential Data Request and NAFTA Transitional Adjustment Assistance Confidential Data Request (OMB No. 1205–0339); and Petition for Trade Adjustment Assistance (OMB No. 1205–0342).

OMB Numbers: 1205–0342; 1205–0190; and 1205–0339.

Affected Public: Businesses or other for-profit; Individuals or households; and State, Local, or Tribal Government.

Type of Response: Reporting.

Estimated burden:

OMB No.	Cite/ Reference	Total Respondents	Annual Responses	Average Time per Response	Total Requested Burden
1205-0342	ETA-9042a	4,100	4,100	15 minutes	1,025
1205-0342	State review of ETA-9042a	N/A	N/A	5 minutes	342
	1205-0342 Sub-total:	////////////////////	4,100	//////////	1,367
1205-0339	ETA-9043a	4,100	4,100	3.5 hours	14,350
1205-0339	ETA-9043	1,000	1,000	3 hours	3,000
1205-0339	State Review of ETA-9043	N/A	N/A	4.5 hours	4,500
	1205-0339 Sub-total:	////////////////////	5,100	//////////	21,850
1205-0190	ETA-8562a	6,560	6,560	1.78 hours	11,677
1205-0190	ETA-8562	2,220	2,220	1.78 hours	3,951
	1205-0190 Sub-total:	////////////////////	8,780	//////////	15,628
	GRAND TOTALS:	////////////////////	**17,980**	//////////	**38,345**

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: The Trade Act of 2002 (Public Law 107–210) amends the Trade Act of 1974 and consolidates two previously authorized worker adjustment assistance programs, Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) into one TAA program effective November 4, 2002. Section 221 (a) of Title II, Chapter 2 of the Trade Act of 1974, as amended by the Trade Act of 2002, authorizes the Secretary of Labor and the Governor of each state to accept petitions for certification of eligibility to apply for adjustment assistance. The petitions may be filed by a group of workers, their certified or recognized union or duly authorized representative, employers of such workers, one-stop operators or one-stop partners. ETA Form 9042a, Petition for Trade Adjustment Assistance, and its Spanish translation, ETA Form 9042a–1, Solicitud De Asistencia Para Ajuste, establish a format that may be used for filing such petitions. ETA Form 9042a and 9042a–1 revise and eliminate ETA Form 9042 (1205–0342, expiring 8/04) and its Spanish translation ETA 9042–1, and also eliminate ETA Form 8560 (1205–0192, expiring 7/03) and its Spanish translation ETA 8559.

Sections 222, 223 and 249 of the Trade Act of 1974, as amended, require the Secretary of Labor to issue a determination for groups of workers as to their eligibility to apply for Trade Adjustment Assistance (TAA). After reviewing all of the information obtained for each petition for trade adjustment assistance filed with the Department, a determination is issued as to whether the statutory criteria for certification are met. The information collected in ETA Form 9043a, Business Confidential Data Request, and ETA Form 8562a, Customer Survey, will be used by the Secretary to specifically determine to what extent, if any, increased imports or shift in production have impacted the petitioning worker group. The ETA 9043a revises ETA 9043 and ETA 9014. The ETA 8562A revises ETA 8562 and ETA 9044. The current ETA 9043 (1205–0339, expiring 8/04) and ETA 9014 (1205–0197, expiring 10/03) will remain in effect until the respective expiration dates. The current ETA 8562 (1205–0190, expiring 10/03) and ETA 9044 (1205–0337, expiring 7/04) will remain in effect until the respective expiration dates.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–24501 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 17, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 693–4158 or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office

of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* * * evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* * * evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* * * enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Request for Examination and/or Treatment.

OMB Number: 1215–0066.

Affected Public: Individuals or households.

Frequency: On occasion.

Number of Respondents: 16,500.

Number of Annual Responses: 109,725.

Estimated Time Per Response: 1.08 minutes.

Total Burden Hours: 118,503.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $43,890.

Description: The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employee in loading, unloading, repairing or building a vessel. Under Section 7 of the Longshore Act, the employer/insurance carrier is responsible for furnishing medical care for the injured employee for such period of time as the injury or recovery period may require. Form LS–1 is used by the Longshore Division to verify that proper medical treatment had been authorized and to determine the severity of a claimant's injuries and thus his/her entitlement to compensation benefits which they are responsible by law to provide if a claimant is medically unable to work as a result of a war-related injury. If the information were not collected, verification of authorized medical care and entitlement to compensation benefits would not be possible.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–24502 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–CF–M

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of a Member to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individuals are hereby appointed to a three-year term on the Department's Performance Review Board: Ray McKinney, Corlis Sellers.

FOR FURTHER INFORMATION CONTACT: Mr. David LeDoux, Director, Office of Executive Resources and Personnel Security, Room C5526, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–7605.

Signed at Washington, DC, this 16th day of September, 2002.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 02–24591 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,188 and NAFTA–05386]

GFC Foam, LLC, West Hazelton, PA; Notice of Negative Determination on Reconsideration

On June 17, 2002, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice will soon be published in the **Federal Register**.

The Department initially denied TAA to workers of GFC Foam, LLC, West Hazelton, Pennsylvania because criterion (3) was not met. The ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. Imports did not contribute importantly to the worker separations.

The Department denied NAFTA–TAA because criteria (3) and (4) have not been met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

The workers at the subject firm were engaged in employment related to the production of polyurethane foam.

The petitioner believes customers were importing polyurethane foam and therefore requested that the Department of Labor survey customers of the subject firm.

On review of the request for reconsideration the Department of Labor determined that a survey of major customers should be conducted for the relevant period.

On reconsideration, the Department contacted the company for a list of major declining customers of the subject firm. The company supplied a list of major customers of the subject firm.

The U.S. Department of Labor conducted a survey of the major customers of the subject firm regarding their purchases of polyurethane foam during 1999, 2000 and January through September 2001. The survey revealed that none of the customers reported importing polyurethane foam from Canada or Mexico or from any other foreign source during the relevant period.

Conclusion

After reconsideration, I affirm the original notices of negative determination regarding eligibility to apply for worker adjustment assistance and NAFTA-Transitional Adjustment Assistance for workers and former workers of GFC Foam, LLC, West Hazelton, Pennsylvania.

Signed at Washington, DC, this 4th day of September 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–24504 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,786; National Textiles, LLC, Gaffney, SC

TA–W–41,819; National Forge Co., Irvine, PA

TA–W–41,852; Cookeville Stamping, Formerly Cookeville Tool and Manufacturing, Inc., A Wholly Owned Subsidiary of American Trim, LLC, Cookeville, TN

TA–W–41,039; Carboloy, Inc., Lenoir City, TN

TA–W–41,915; Mountain High Timber, LaPine, OR

TA–W–41,926; Spartech Plastics—Conneaut, Extruding Sheet and Rollstock, Conneaut, OH

TA–W–41,898; Multicraft Technology, a Division of Morgan Auto/Consumer Group, Tylertown, MS

TA–W–41,854; ZF Industries, Inc., Tuscaloosa, AL

TA–W–41,630; Metokote Corp., Louden, TN

TA–W–41,723; Snorkel International, Omniquip Textron, Inc., Elwood, KS

TA–W–41,543; General Electric Transportation Systems, a Subsidiary of General Electric Co., Erie, PA

TA–W–41,838; Feralloy North American Steel, Melvindale, MI

TA–W–41,519; Moll Industries, Display Div., Jeffrey Lane Facility, Morristown, NJ

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,826; Marco Marine Seattle, a Subsidiary of Marine Construction and Design Co Manufacturing Products, Div., Seattle, WA

TA–W–41,757; Curt G. Joa, Inc., Florida Div., Boyton Beach, FL

TA–W–41,421; American Dawn, Inc., Compton, CA'' All workers engaged in the production of tablecloths, napkins, dishtowels, aprons, linen, rags and throw pillows for home retail sale, are denied eligibility to apply for trade adjustment assistance.

TA–W–39,147; Stainless Tank and Equipment (ST&E), Cottage Grove, WI

TA–W–41,932; Jetcraft Boats, Medford, OR

TA–W–41,837; Kurt Manufacturing Co., Minneapolis, MN

TA–W–41,387; Contract Embroidery, El Paso, TX

TA–W–41,827; Motorola, Inc., Semiconductor Products Sector, MOS∧, Mesa, AZ

TA–W–41,591; Riley Gear Corp., North Tonawanda, NY

TA–W–41,652; Sagem, Inc., Greenville, SC

TA–W–41,856; Corning Cable Systems, a Subsidiary of Corning, Inc., Marshfield, MO

TA–W–41,822; Nextec Applications, Inc., Vista, CA

TA–W–41,869; Skyworks Solutions, Inc., Test and Assembly Div., Haverhill, MA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–41,664; Alyesha Pipeline Service, Anchorage, AK, NC

TA–W–41,807; North American Refractories Co., a Subsidiary of RHI Refractories Holding Co., Flow Control Group, Pittsburgh, PA

TA–W–41,830; Ameriphone, Inc., a Wholly Owned Subsidiary of Plantronics, Inc., Garden Grove, CA

TA–W–41,909; Defender Services, Inc., Greensboro, NC

TA–W–41,953; Astec America, Inc., Carlsbad, CA

TA–W–41,877; Willamette Industries, Weyerhaeuser Co., Albany, OR

TA–W–41,880; Affiliated Building Services, Biscoe, NC

TA–W–42,006; Oshkosh B'Gosh, Inc., Miami Trim Warehouse, Medley, FL

TA–W–42,018; Panavision Chicago, Panavision, Inc., Chicago, IL

TA–W–41,893; J and J Forging, Inc., Monaca, PA

TA–W–41,895; Xerox Corp., Office Systems Group (OSG), Office Products Delivery Unit (OPDU), Webster, NY

TA–W–41,851; Burlington Resources, Gulf Coast Div., Houston, TX

TA–W–41,600; Columbia Sportswear Co., Portland, OR

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–41,806; Pa-Ted Spring Co., El Paso, TX

The investigation revealed that criteria (1) and criteria (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification. Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,513; Square D Company, Schneider Electric, Oxford, OH

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–41,920; BAE Systems, Precision Aerostructures, Wellington, KS

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,508; American Meter Co., Erie, PA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,897; National Electrical Carbon Products, Birmingham, AL: July 8, 2001.
TA–W–41,881; Holloway Sportswear, Inc., Ville Platte, LA: July 17, 2001.
TA–W–41,870; Cummins, Inc., Universal Silencer, Montello, WI: July 2, 2001.
TA–W–41,847; Cooper Tools, a Subdivision of Cooper Industries, Inc., Cortland, NY: June 25, 2001.
TA–W–41,774; BR Holdings, Ltd, Racine Steel Castings Div., Racine, WI: June 14, 2001.
TA–W–41,610; Simmons Juvenile Products Co., Inc., New London, WI: May 16, 2001.
TA–W–40,980; Dyna-Craft Industries, Inc., Murrysville, PA: January 20, 2001
TA–W–41,421; American Dawn, Inc., Compton, CA: April 1, 2001. All workers engaged in the production of tablecloths, napkins, dishtowels, aprons, linen and rags for institutional use are eligible to apply for trade adjustment assistance.
TA–W–41,519A; Moll Industries, Brush Div., Davis Avenue Facility, Morristown, TN: December 6, 2000.
TA–W–41,845; Norma Tech, Watertown, CT: July 1, 2001.
TA–W–41,836; Mansfield Plumbing Products, Kilgore, TX: June 3, 2001.
TA–W–41,832; Alcoa Fujikura Ltd, Optical Fiber Systems, Houston, MS: April 29, 2001.
TA–W–41,734; Santiam Forest Products, Sweet Home, OR: June 21, 2001.
TA–W–41,868; VF Imagewear (West), Inc., Mt. Pleasant, TN: July 12, 2001.
TA–W–41,863; Kalkstein Silk Mills, Inc., Paterson, NJ: July 18, 2002.
TA–W–41,853; Glamorise, Willamsport, PA: June 12, 2001.
TA–W–41,871; Harvard Industries, Inc., Albion Div., Albion, MI: June 27, 2001.
TA–W–41,883; The Akron Equipment Corp., a Div. Of Akron Equipment Corp., Akron, OH: June 14, 2001.
TA–W–41,892; N F and M International, Monaca, PA: July 18, 2001.
TA–W–41,894; Coilcraft Hawarden, a Subsidiary of Coilcraft, Inc., Hawarden, IA: July 10, 2001.
TA–W–41,899; McMahon Group, LLC, d/b/a Syrtec, Liverpool, NY: July 8, 2001.
TA–W–41,904; Americal Corp., Carrollton, GA: July 8, 2001.
TA–W–41,906; Cooper Tools, a Div. of Cooper Industries, Cheraw, SC: July 9, 2001.
TA–W–41,914; Tom Harmon Logging, Sand Creek-Woods Div., San Creek, OR: July 15, 2001.
TA–W–41,957; Mahoning Mills, Inc., Kutztown, PA: July 22, 2001.
TA–W–41,922; Porterco, LLC, a Wholly Owned Subsidiary of Aladdin Industries, LLC, Magnolia, AR: July 23, 2001.
TA–W–41,919; Saint-Gobain Abrasives, Inc., Coated Abrasives Div., Wheatfield, NY: July 18, 2001.
TA–W–41,951; Lion Apparel, Inc., Williamsburg, KY: July 31, 2001.
TA–W–41,949; Don'l, Inc., Toccoa, GA: July 22, 2001.
TA–W–41,654; Harry J. Price Textiles, Inc., Lowell, NC: May 15, 2001.
TA–W–41,720; New Boston Coke Corp., New Boston, OH: June 13, 2001.
TA–W–41,717; IMI Cornelius, Inc., Anoka, MN: June 4, 2001.
TA–W–41,644; Lear Corp., Marlette Facility, Marlette, MI: May 31, 2001.
TA–W–41,594; Fulflex, Inc., Scotland Neck, NC: May 11, 2001.
TA–W–41,366; Starkey Laboratories, Glencoe, MN: April 8, 2001.
TA–W–41,087; Holophane Corp., Pataskala, OH: February 1, 2001.
TA–W–41,924 & A; MCMS, Inc., Durham, NC and San Jose, CA: December 26, 2000.
TA–W–39,994; Talbar, Inc., Meadeville, PA: August 27, 2000.
TA–W–39,575; J and L Specialty Steel, Inc., Louisville, OH: June 18, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of September, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06273; Franklin Polo, Franklin, GA
NAFTA–TAA–06211; General Electric Transportation Systems, a Subsidiary of General Electric Co., Erie, PA: All workers engaged in the production of diesel electric locomotive and off-highway drive systems are denied eligibility to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.
NAFTA–TAA–6074; American Dawn, Inc., Compton, CA: All workers engaged in the production of tablecloths, napkins, dishtowels, aprons, linen, rags, and throw pillows for home retail sales, are denied eligibility to apply ofr NAFTA–TAA under Section 250 of the Trade Act of 1974.
NAFTA–TAA–06294; Curt G. Joa, Inc., Florida Div., Boyton Beach, FL
NAFTA–TAA–06336; Snorkel International, Omniquip Textron, Inc., Elwood, KS
NAFTA–TAA–06346; National Textiles, LLC, Gaffney, SC
NAFTA–TAA–06381; Mountain High Timber, LaPine, OR
NAFTA–TAA–06392; Copeland Corp., Ava, MO
NAFTA–TAA–06353; American Meter Co., Erie PA
NAFTA–TAA–06426; Mahoning Mills, Inc., Kutztown, PA
NAFTA–TAA–06444; Trinity Industries, Inc., Rail Components and Repair Div., Butler, PA
NAFTA–TAA–06297; Americal Corp., Carrollton, GA
NAFTA–TAA–06314; Newcore, Inc., Technologies Plant, Troy, MI
NAFTA–TAA–04730; Stainless Tank and Equipment (ST&E), Cottage Grove, WI
NAFTA–TAA–06455; Pella Plastics, Inc., Plant 3, New Hope, TN

NAFTA–TAA–06224; Metokote Corp., Louden, TN
NAFTA–TAA–06348; Feralloy North American Steel, Melvindale, MI

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–06231; APL Logistics, Socorro, TX
NAFTA–TAA–06485; Oshkosh B'Gosh, Ic., Miami Trim Warehouse, Medley, FL
NAFTA–TAA–06321; Xerox Corp., Office Systems Group (OSG), Office Products Delivery Unit (OPDU), Webster, NY
NAFTA–TAA–06385; Ameriphone, Inc., a Wholly Owned Subsidiary of Plantronics, Inc., Garden Grove, CA
NAFTA–TAA–06366; Sitel Corp., Philips Div., Longview, TX

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–06211; General Electric Transportation Systems, a Subsidiary of General Electric Co., Erie, PA: May 16, 2001. All workers engaged in the production of U-tubes and gear cases who became separated from employment on or after May 16, 2001.
NAFTA–TAA; 06074; American Dawn, Inc., Compton, CA: April 1, 2001

All workers engaged in the production of tablecloths, napkins, dishtowels, aprons, linen, and rags for institutional use who became separated from employment on or after April 1, 2001.

NAFTA–TAA–06251; Kimble Glass, Cajah Mountain Plant, Lenoir, NC: May 20, 2001.
NAFTA–TAA–06301; BR Holdings, Ltd, Racine Steel Castings Div., Racine, WI: June 14, 2001.
NAFTA–TAA–06369; Holloway Sportswear, Inc., Ville Platte, LA: July 12, 2001.
NAFTA–TAA–06377; Cummins, Inc., Universal Silencer, Montello, WI: July 3, 2001.
NAFTA–TAA–06400; Komatsu America Corp., Peoria, IL: June 10, 2001.
NAFTA–TAA–06402; National Electrical Carbon Products, Birmingham, AL: July 8, 2001.
NAFTA–TAA–06435; A.O. Smith Electrical Products Co., Electrical Products Div., Scottsville, KY: July 29, 2001.
NAFTA–TAA–06437; Ohmite Manufacturing Co., CT Gamble Div., Delanco, NJ: June 26, 2001.
NAFTA–TAA–06475; Tyco Electronics, Energy Connections and Fittings Business Unit, Fuquay-Varina, NC: August 13, 2001.
NAFTA–TAA–06382; Tom Harmon Logging, Sand Creek-Woods Div., San Creek, OR: July 15, 2001.
NAFTA–TAA–06387; The Pfaltzgraff Co., Also Known as Susquehanna Pfaltzgraff, York, PA: July 15, 2001.
NAFTA–TAA–06405; Saint-Gobain Abrasives, Inc., Coated Abrasives Division, Wheatfield, NY: July 18, 2001.
NAFTA–TAA–06406; Don'l, Inc., Toccoa, GA: July 22, 2001.
NAFTA–TAA–06428; Jetcraft Boats, Medford, OR: July 29, 2001.
NAFTA–TAA–06449; IMI Cornelius, Inc., Anoka, MN: June 4, 2001.
NAFTA–TAA–06238; Siemens Engergy and Automation, Inc., Power Distribution Infrastructure and Controls Div., Bellefontaine, OH: April 25, 2001.
NAFTA–TAA–06248; Lear Corp., Marlette Facility, Marlette, MI: May 31, 2001.
NAFTA–TAA–06263; Harry J. Price Textiles, Inc., Lowell, NC: May 15, 2001.
NAFTA–TAA–06375; VF Imagewear (West), Inc., Mt. Pleasant, TN: July 12, 2001.

I hereby certify that the aforementioned determinations were issued during the months of September, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 13, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–24506 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,933]

Agere Systems, Inc. Formerly DBA Cirent Semiconductor, a Subsidiary of Lucent Technologies, Orlando, Florida; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 5, 2002 in response to a worker petition, which was filed by the International Brotherhood of Electrical Workers Union, Local 2000 on behalf of workers at Agere Systems, Inc., formerly doing business as Cirent Semiconductor, a subsidiary of Lucent Technologies, Orlando, Florida.

The petition review showed that it was a photocopy of the February 15, 2002, petition that resulted in a negative determination for workers of Agere Systems, Inc. on March 11, 2002 (TA–W–40,234). No new information was presented which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, DC this 11th day of September, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–24510 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,875]

Agrium Conda Phosphate Operations, Soda Springs, Idaho; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 22, 2002, in response to a petition filed on behalf of workers at Agrium Conda Phosphate Operations, Soda Springs, Idaho.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 10th day of September 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–24508 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,809]

Encana Energy Resources, Inc. Butte, Montana; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was

initiated on July 15, 2002, in response to a petition filed by a company official on behalf of workers at Encana Energy Resources, Inc., Butte, Montana.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed in Washington, DC this 10th day of September 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–24507 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,550]

Lenz and Rieker, Totowa, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 20, 2002, in response to a petition filed on behalf of workers at Lenz & Riecker, Totowa, New Jersey.

The Department has been unable to locate principals of the firm or otherwise obtain information to reach a determination on worker eligibility. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 5th day of September 2002.

Richard Church

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–24505 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 7, 2002.

Interested persons are invite to submit written comments regarding the subject matter of the investigation to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 7, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210

Signed at Washington, DC, this 26th day of August, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 08/26/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,003	Olson Technologies (USWA)	Allentown, PA	08/19/2002	Valves.
42,004	IBM Corp. (Wkrs)	Essex Junction, VT	08/14/2002	Semi-conductors.
42,005	Sanmina-SCI (Co.)	Derry, NH	08/07/2002	Printed circuit boards.
42,006	Miami Trim Warehouse (Co.)	Medley, FL	08/19/2002	Packs and distributes zippers.
42,007	Milwaukee Valve (IAMAW)	Milwaukee, WI	05/08/2002	Valves.
42,008	Kraft Foods (Co.)	Holland, MI	01/18/2002	Lifesavers hard candies and mints.
42,009	StorageTek (Co.)	Louisville, CO	07/31/2002	Field replacement units.
42,010	Montgomery Co. (The) (Co.)	Opelika, AL	08/06/2002	Cotton bales.
42,011	London Fog (UNITE)	Eldersburg, MD	08/09/2002	Raincoats, jackets and top coats.
42,012	ACS, Inc. (Wkrs)	Phoenix, AZ	08/08/2002	Computer information services for IBM.
42,013	Baker Enterprises (Wkrs)	Alpena, MI	08/07/2002	Concrete block machinery and components.
42,014	S. Goldberg and Co. (Co.)	Hackensack, NJ	08/13/2002	House slippers.
42,015	Rhodia, Inc. (IFCW)	St. Louis, MO	08/19/2002	Methyl salicylate and aspirin.
42,016	National Torch (IUE)	Pittsburgh, PA	07/29/2002	Torch tips for welding industry.
42,017	Motorola—Tempe Final Mfg (Wkrs)	Tempe, AZ	08/06/2002	Semiconductors for cell phones.
42,018	Panavision (Wkrs)	Chicago, IL	06/28/2002	Camera lenses and lighting equipment.
42,019	Encon Eye Protection (Wkrs)	Coudersport, PA	08/08/2002	Safety glasses.
42,020	Maurer Enterprises (Wkrs)	Grants Pass, OR	08/06/2002	Wooden stakes and poles.
42,021	Bronxwood Dye (UNITE)	Bronx, NY	08/07/2002	Dye and finishing products.
42,022	Molded Container (Wkrs)	Portland, OR	08/08/2002	Plastic packaging for food.
42,023	Saturn Electronics (Wkrs)	Auburn Hills, MI	08/07/2002	Electronic boards and modules.
42,024	McInnes Steel (UNITE)	Corry, PA	07/23/2002	Open die forgings.
42,025	Sappi Fine Paper (Wkrs)	Cloquet, MN	08/17/2002	Highline coated paper.
42,026	Timex Corporation (Wkrs)	Middlebury, CT	08/10/2002	Watches.
42,027	NCS Learn (Wkrs)	East Lansing, MI	08/07/2002	Educational software.
42,028	Loreex Corporation (Wkrs)	Guilderland, NY	08/08/2002	Woven polyethylene textile products.
42,029	Wyman Gordon Forgings (IAMAW)	Houston, TX	08/14/2002	Aircraft engine components.
42,030	Becton Dickinson (Co.)	Hancock, NY	08/12/2002	Surgical blades.
42,031	Celestica Corp. (IBEW)	Oklahoma City, OK	08/12/2002	Circuit boards for telecom equipment.

APPENDIX—Continued

[Petitions instituted on 08/26/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
42,032	Millennium Plastics (Co.)	El Paso, TX	08/14/2002	Molded plastic parts for vacuum cleaners.
42,033	Bridgeport Machines (Co.)	Bridgeport, CT	08/12/2002	Bridgeport vertical turret mills.
42,034	E.M. Bair (Wkrs)	Canton, OH	08/07/2002	Guide rolls for steel mills.
42,035	Piece Dye Acquisition (Co.)	Edenton, ND	08/10/2002	Textile dying and finishing.

[FR Doc. 02–24503 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,956]

Stryker Howmedica Osteonics, Rutherford, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 12, 2002 in response to a petition, which was filed by the company on behalf of workers at Stryker Howmedica Osteonics, Rutherford, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 11th day of September, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–24511 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,931]

Vertical Aviation Technologies, Inc., Helicopter Research, Design, and Manufacturing, Sanford, Florida; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 5, 2002 in response to a worker petition, which was filed by the company on behalf of workers at Vertical Aviation Technologies, Inc., Sanford, Florida.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 11th day of September, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–24509 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA 6359]

Agrium Conda Phosphate Operations Soda Springs, ID; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on June 12, 2002, in response to a petition filed by the company on behalf of workers at Agrium Conda Phosphate Operations, Soda Springs, Idaho.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 10th day of September 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–24512 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–06361]

Encana Energy Resources, Inc. Butte, Montana; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on July 8, 2002, in response to a petition filed by a company official on behalf of workers at EnCana Energy Resources, Inc., Butte, Montana.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 10th day of September 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–24513 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This

program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: ''Optional Use Payroll Form Under the Davis-Bacon Act'' (WH–347). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before November 26, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, E-mail *pforkel@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION

I. Background

The WH–347 is an optional form which may be used by contractors and subcontractors to certify payrolls, attesting that proper wage rates and fringe benefits have been paid to their employees performing work on contracts covered by the Davis-Bacon and related Acts and the Copeland Act. Contracting officials and Wage-Hour investigative staff use these payrolls to verify that legal rates are paid and as an aid in determining whether employees have been properly classified for the work they perform. This information collection is currently approved for use through March 31, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval to collect this information in order to carry out its responsibility to determine a contractor's compliance with provisions of the Davis-Bacon and Related Acts and the Copeland Act. There is a revision in the language in the instructions for completing the WH–347 to reflect that overtime pay under the Contract Work Hours and Safety Standards Act is no longer required for hours worked in excess of eight in a day, and to correctly reference the Act.

Type of Review: Revision.

Agency: Employment Standards Administration.

Title: Optional Use Payroll Form Under the Davis-Bacon Act.

OMB Number: 1215–0149.

Affected Public: Business or other for-profit; Individuals or households; State, Local or Tribal Government; Federal Government.

Total Respondents: 100,880.

Frequency: Weekly.

Total Responses: 9,280,960.

Estimated Total Burden Hours: 8,700,000.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $371,238.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: Sepetember 19, 2002.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–24497 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection: ''Requirements of a Bona Fide Profit Sharing Plan or Trust; and Requirements of a Bona Fide Thrift or Savings Plan.'' A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before November 26, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, E-mail *pforkel@fenix2.dol-esa.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

Section 7(e)(3)(b) of the Fair Labor Standards Act (FLSA) permits the exclusion from an employee's regular rate of pay, payments on behalf of an employee to a ''bona-fide'' profit-sharing plan, and a ''bona-fide'' thrift or savings plan. Regulations 29 CFR part 549 set forth the requirements of a bona fide profit-sharing plan or trust, and Regulations 29 CFR part 547 set forth the requirements of a bona fide thrift or savings plan. This clearance involves employer maintenance of records of such plans. This information collection is currently approved for use through February 28, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to determine whether a given thrift or savings plan or a profit-sharing plan or trust is in compliance with section 7(e)(3). There is no change in this information collection since the last OMB clearance.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Requirements of a Bona Fide Thrift or Savings Plan, and Requirements of a Bona Fide Profit-Sharing Plan.

OMB Number: 1215–0119.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Total Respondents: 462,000.

Frequency: Recordkeeping only.

Total Responses: 462,000.

Estimated Total Burden Hours (Recordkeeping): 2.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 20, 2002.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–24498 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decision

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' are listed by Volume and States:

Volume IV

Minnesota
MN020062 (Sep. 27, 2002)

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

District of Columbia
DC020001 (Mar. 1, 2002)
DC020003 (Mar. 1, 2002)
Maryland
MD020048 (Mar. 1, 2002)
MD020057 (Mar. 1, 2002)
Virginia

VA020025 (Mar. 1, 2002)
VA020078 (Mar. 1, 2002)
VA020079 (Mar. 1, 2002)
VA020092 (Mar. 1, 2002)
VA020099 (Mar. 1, 2002)

Volume III

None

Volume IV

Illinois
IL020006 (Mar. 1, 2002)
IL020008 (Mar. 1, 2002)
IL020009 (Mar. 1, 2002)
IL020010 (Mar. 1, 2002)
IL020011 (Mar. 1, 2002)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts, are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)of* the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington DC, this 19th day of September 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–24373 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. GEW2002–1]

Extension of Comment Period for Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Nursing Homes

AGENCY: Occupational Safety and Health Administration (OSHA); Department of Labor

ACTION: Extension of comment period.

SUMMARY: The Department of Labor is extending the comment period for its draft, Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Nursing Homes, an additional thirty (30) days until October 30, 2002.

DATES: *Written Comments:* Comments must be submitted by the following dates: *Hard Copy.* Your comments must be submitted (postmarked or sent) by October 30, 2002. *Facsimile and electronic transmission:* Your comments must be sent by October 30, 2002. (Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

ADDRESSES:

I. Submission of Comments

Regular mail, express delivery, hand-delivery, and messenger service: You must submit three copies of your comments and attachments to the OSHA Docket Office, docket No. GE2002–1, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax Them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. GE2002–1, in your comments.

Electronic: You may submit your comments (but not attachments) through the Internet at *http://ecomments.osha.gov/.* (Please *see* the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

II. Obtaining Copies of the Draft Guidelines: The draft guidelines for the nursing home industry are available for downloading from OSHA's Web site at *http://www.osha.gov.* A printed copy of the draft guidelines is available from the OSHA Publications Office, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or by telephone at 1–800–321–OSHA (6742). You may fax your request for a copy of the draft guidelines to (202) 693–2498.

FOR FURTHER INFORMATION CONTACT: Steven F. Witt, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION:

I. Extension of Comment Period

OSHA announced publication of its draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Nursing Homes in the **Federal Register** on August 30, 2002 (67 FR 55884). In that notice, the Agency

provided the public with thirty (30) days to submit written comments, extending through September 30, 2002. Several interested persons requested that OSHA provide additional time to submit written comments on the draft guidelines. In light of the interest expressed by the public, OSHA is providing an additional thirty (30) days for comment. Accordingly, written comments must now be submitted by October 30, 2002. OSHA is holding an stakeholder meeting in the Washington, DC, area on November 18, 2002.

II. Submission of Comments

As stated in the August 30, 2002, **Federal Register** notice, you may submit comments on the draft guidelines by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. Please note that you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

This notice was prepared under the direction of John L. Hensaw, Assistant Secretary for Occupational Safety and Health. It is issued under sections 4 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 657).

Issued at Washington, DC, this 24th day of September, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–24708 Filed 9–26–02; 8:45 am]

BILLING CODE 4510–26–M

MERIT SYSTEMS PROTECTION BOARD

Information Quality Guidelines

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) announces that its final Information Quality Guidelines, which are effective October 1, 2002, have been posted on the MSPB website.

FOR FURTHER INFORMATION CONTACT: Bentley M. Roberts, Jr., Clerk of the Board, 1615 M Street, NW., Washington, DC 20419; telephone (202) 653–7200; facsimile (202) 653–7130; e-mail to *mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury & General Government Appropriations Act of FY 2001 (Public Law 106–554) requires each Federal agency to publish guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of the information it disseminates to the public. Agency guidelines must be based on government-wide guidelines issued by the Office of Management and Budget (OMB). In compliance with this statutory requirement and OMB instructions, the MSPB has posted its final Information Quality Guidelines on the MSPB Web site (*www.mspb.gov).* The Guidelines describe the agency's procedures for ensuring the quality of information that it disseminates to the public and the procedures by which an affected person may obtain correction of information disseminated by the MSPB that does not comply with the agency's Guidelines or the government-wide guidelines issued by OMB. Persons who cannot access the Guidelines through the Internet may request a paper or electronic copy by contacting the Office of the Clerk of the Board.

Dated: September 23, 2002.

Bentley M. Roberts,

Clerk of the Board.

[FR Doc. 02–24613 Filed 9–26–02; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–111)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: John Kusmiss, Patent Counsel, NASA Management Office-JPL, 4800 Oak Grove Drive, Mail Stop 180801, Pasadena, CA 91109; telephone (818) 354–7770.

NASA Case No. NPO–21221–1: An Interferometric Apparatus For Ultra-High Precision Displacement Measurement;

NASA Case No. NPO–30322–1: Extremely Efficient, Miniaturized, Long Lived Alpha-Voltaic Power Source Using Liquid Gallium As The Energy Conversion Medium;

NASA Case No. NPO–30232–1: Strongly-Refractive One-Dimensional Photonic Crystal Prisms;

NASA Case No. DRC–099–037: Force Measuring C-Clamp;

NASA Case No. DRC–001–049: Adaptive Lossless Data Compression;

NASA Case No. DRC–001–009: Airforce Shaped Flow Angle Probe;

NASA Case No. NPO–19855–1: CARBON DIOXIDE ABSORPTION HEAT PUMP;

NASA Case No. NPO–20148–2: Protective Fullerene (C60) Packaging System For Microelectromechanical Systems Applications.

Dated: September 20, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–24522 Filed 9–26–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–112)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Linda Blackburn, Patent Counsel, NASA Langley Research Center, Mail Code 212, Hampton, VA 23681–2199; telephone (757) 864–9260, fax (757) 864–9190.

NASA Case No. LAR–15555–3: Molecular Level Coating Of Metal Oxide Particles;

NASA Case No. LAR–15686–2: A Device For The Insertion Of Discontinuous Through-The-Thickness Reinforcements Into Preforms And Prepreg Material (Div Of-1);

NASA Case No. LAR–16116–1: Giant Magnetoresistive Based Self-Nulling Probe For Deep Flaw Detection;

NASA Case No. LAR–16232–1-NP: Polymeric Blends For Sensor And Actuation Dual Functionality;

NASA Case No. LAR–16324–1: Self-Activating System And Method For Alerting When An Object Or A Person Is Left Unattended;
NASA Case No. LAR–15854–1: Method And Apparatus For Non-Invasive Measurement Of Changes In Intracranial Pressure;
NASA Case No. LAR–16176–1: Space Environmentally Durable Polyimides And Copolyimides;
NASA Case No. LAR–16279–1: Single-Element Electron-Transfer Optical Detector System;
NASA Case No. LAR–16279–2: Multi-Element Electron-Transfer Optical Detector System;
NASA Case No. LAR–16307–1–SB: Methodology For The Effective Stabilization Of Tin-Oxide-Based Oxidation/Reduction Catalysts;
NASA Case No. LAR–15943–1: Method And Apparatus For Determining Changes In Intracranial Pressure Utilizing Measurement Of The Circumferential Expansion Or Contraction Of A Patient's Skull;
NASA Case No. LAR–16126–1: Synchronized Electronic Shutter System And Method For Thermal Nondestructive Evaluation;
NASA Case No. LAR–16311–1: Heat, Moisture, Chemical Resistant Polyimide Compositions And Methods For Making And Using The Same;
NASA Case No. LAR–16482–1: Phenyethynyl-Containing Imide Silanes;
NASA Case No. LAR–15908–1: Piezoelectric Composite Device And Method For Making Same;
NASA Case No. LAR–16348–1: Base Passive Porosity For Vehicle Drag Reduction;
NASA Case No. LAR–16012–1–CU: Improvement To The Multiscale Retinex With Color Restoration;
NASA Case No. LAR–16332–1–CU: Method Of Improving A Digital Image Having White Zones.

Dated: September 20, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–24523 Filed 9–26–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–113)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Counsel, Glenn Research Center at Lewis Field, Mail Code 500–118, Cleveland, OH 44135; telephone (216) 433–8855, fax (216) 433–6790.

NASA Case No. LEW–16056–4: Design And Manufacture Of Long-Life Hollow Cathode Assemblies;
NASA Case No. LEW–17093–1: NiA1-Based Approach For Rocket Combustion Chambers;
NASA Case No. LEW–17112–1: Seal For Large Structural Movements;
NASA Case No. LEW–17170–1: Common-Layered Architecture For Semiconductor Silicon Carbide (CLASSIC) Bulk Fabrication;
NASA Case No. LEW–17206–1: Economical Dual Microstructure Heat Treatment Apparatus/Process;
NASA Case No. LEW–17270–1: Innovative Heat Pipe Systems Using New Working Fluids;
NASA Case No. LEW–17275–1: Low CTE X2 Phase Rate Earth Silicate-Based EBC/TBC's For Si-Based Ceramics;
NASA Case No. LEW–17299–1: Polyimide Rod-Coil Block Copolymers As Membrane Materials For Ion Conduction;
NASA Case No. LEW–17316–1: Bearingless Switched Reluctance Motor, Aka ''Morrison Roto'';
NASA Case No. LEW–16636–2: Reduced Toxicity Fuel Satellite Propulsion System Including Catalytic Decomposing Element With Hydrogen Peroxide;
NASA Case No. LEW–16636–3: Reduced Toxicity Fuel Satellite Propulsion System Including Fuel Cell Reformer With Alcohols;
NASA Case No. LEW–16636–4: Reduced Toxicity Fuel Satellite Propulsion System Including Plasmatron;
NASA Case No. LEW–16636–5: Reduced Toxicity Fuel Satellite Propulsion System Including Axial Thruster And ACS Thruster Combination;
NASA Case No. LEW–16988–1: Magnetohydrodynamic Power Extraction And Flow Conditioning In A Gas Turbine Inlet;
NASA Case No. LEW–17111–1: Planar Particle Imaging And Doppler Velocimetry (PPIDV);
NASA Case No. LEW–17133–1: High Performance Polymers From The Diels-Alder Trapping Of Photochemically Generated Intermediates;
NASA Case No. LEW–17017–1: Minimally Intrusive Supersonic Injectors For Augmented Rocket And RBCC/Scramjet Propulsion Systems;
NASA Case No. LEW–17068–1: Micro-Scalable Thermal Control Device;
NASA Case No. LEW–17186–1: Method For Growing Low-Defect Single Crystal Heteroepitaxial Films.

Dated: September 20, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–24524 Filed 9–26–02; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–116)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Rob Padilla, Patent Counsel, Ames Research Center, Mail Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104, fax (650) 604–2767.

NASA Case No. ARC–14612–1: Wire Insulation Defect Detector;
NASA Case No. ARC–14586–1: A Hybrid Neural Network And Support Vector Machine Method For Optimization;
NASA Case No. ARC–14613–1: Controlled Patterning And Growth Of Single Wall And Multi-Wall Carbon Nanotubes;
NASA Case No. ARC–14638–1: Diffraction-Based Optical Switch;
NASA Case No. ARC–14577–1: Wide Operational Range Thermal Sensor;
NASA Case No. ARC–14606–1: Method And System For Active Noise Control Of Tiltrotor Aircraft;
NASA Case No. ARC–14682–1: Ultrafast Laser Beam Switching And Pulse Train Generation By Using Coupled Vertical-Cavity, SurfaceEmitting Lasers (VCSELs);
NASA Case No. ARC–14733–1: An Environmentally Compatible Method To Purify Carbon Nanotubes.
NASA Case No. ARC–14941–1: Carbon Nanotubes As A Prototype Interface For Retinal Cell Recording And Stimulation (Vision Chip);

NASA Case No. ARC–14554–1: Neighboring Optimal Aircraft Guidance In A General Wind Environment.

Dated: September 20, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–24525 Filed 9–26–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–117)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: James McGroary, Patent Counsel, Marshall Space Flight Center, Code LS01, Huntsville, AL 35812; telephone (256) 544–0013; fax (256) 544–0258.

NASA Case No. MFS–31323–1: Variable Pressure Washer;

NASA Case No. MFS–31380–1: Fabrication Of Large Bulk High Temperature Superconductor Articles;

NASA Case No. MFS–31559–1: Thermal Stir Welding Process And Apparatus;

NASA Case No. MFS–31562–1: Dual Use Corrosion Inhibitor And Penetrant For Anomaly Detection In Neutron/X Radiography;

NASA Case No. MFS–26503–2–CIP: Microgravity Fiber Pulling Apparatus;

NASA Case No. MFS–31316–1: Passive Light Exposure Monitor;

NASA Case No. MFS–31503–1: Combination Solar Sail And Electrodynamic Tether Propulsion System;

NASA Case No. MFS–31243–2–CON: Video Image Stabilization And Registration;

NASA Case No. MFS–31399–1: Video Guidance Sensor System With Laser Rangefinder;

NASA Case No. MFS–31403–2–DIV: Method For Joining Structural Elements;

NASA Case No. MFS–31475–2–DIV: Panoramic Refracting Conical Optic;

NASA Case No. MFS–31596–1: Fabrication Of Fiber Optic Grating Apparatus And Method;

NASA Case No. MFS–31698–1: Method Of Fabricating Protective Coating For A Crucible With The Coating Having Channels Formed Therein;

NASA Case No. MFS–31828–1: High Strength Aluminum Alloy For High Temperature Applications;

NASA Case No. MFS–31464–1: Multi-Layer Identification Label Using Stacked Identification Symbols;

NASA Case No. MFS–31546–1: High Precision Grids For Neutron, Hard X-Ray, And Gamma-Ray Imaging Systems;

NASA Case No. MFS–31565–1: Phase Modulator With Terahertz Optical Bandwidth Formed By Multi-Layered Dielectric Stack;

NASA Case No. MFS–31584–1: Hypergolic Ignitor Assembly;

NASA Case No. MFS–31408–1: Solar Wing And Tether Mechanisms For Asteroid Uncooperative Docking And Asteroid Orbit Adjustments;

NASA Case No. MFS–31499–1: Microfocus—Polycapillary Optic X-ray Analysis;

NASA Case No. MFS–31525–1: Video Image Tracking Engine;

NASA Case No. MFS–31535–1: Method And Apparatus For Optical Position Detection;

NASA Case No. MFS–31544–1: Captive Fastener Device;

NASA Case No. MFS–31549–1: Ultra Thin Substrate Integral Memory And Radio Frequency Identification Devices;

NASA Case No. MFS–31560–1: Hearing Aid Assembly;

NASA Case No. MFS–31594–1: Multilayer Composite Pressure Vessel;

NASA Case No. MFS–31613–1: Cross Cell Sandwich Core;

NASA Case No. MFS–31616–1: Passive Ball Capture Joint.

Dated: September 20, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–24526 Filed 9–26–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–118)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Randy Heald, Patent Counsel, Kennedy Space Center, Mail Code CC–A, Kennedy Space Flight Center, FL 32899; telephone (321) 867–7214, fax (321) 867–1817.

NASA Case No. KSC–12049: Liquid Galvanic Coatings for Protection of Imbedded Metals;

NASA Case No. KSC–12139: Thermodynamic Pressure/Temperature Transducer Health Check;

NASA Case No. KSC–12183: Characterizing Sensors;

NASA Case No. KSC–12190: A Novel Ferromagnetic Conducting Lignosulfonic Acid-Doped Polyaniline;

NASA Case No. KSC–12255: Leak And Pipe Detection Method And System;

NASA Case No. KSC–12201: A Scaling Device For Photographic Images;

NASA Case No. KSC–12209: Injection Nozzle For Hydrogen Peroxide With Ultraviolet Light Activation;

NASA Case No. KSC–11979: Diaminobenzoquinones as Corrosion Inhibitory Coating Additives;

NASA Case No. KSC–12205: Apparatus And Method For Thermal Performance Testing Of Pipelines And Piping Systems;

NASA Case No. KSC–12221: Multi Sensor Transducer And Weight Factor—Combined With KSC–12359;

NASA Case No. KSC–12285: Ablative Composite;

NASA Case No. KSC–12092–1: Thermal Insulation System And Method;

NASA Case No. KSC–12107: Methods of Testing Thermal Insulation and Associated Test Apparatus;

NASA Case No. KSC–12108: Multi-Purpose Thermal Insulation Test Apparatus;

NASA Case No. KSC–12191: Corrosion Prevention Of Cold Rolled Steel Using Water Dispensible Lignosulfonic Acid Doped Polyaniline;

NASA Case No. SSC–00134–1: Pseudo-Brewster-Angle Thermal Infrared Radiometer;

NASA Case No. SSC–00124–1: Radiant Temperature Nulling Radiometer.

Dated: September 20, 2002

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–24527 Filed 9–26–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–115)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Edward Fein, Patent Counsel, Johnson Space Center, Mail Code HA, Houston, TX 77058–3696, telephone (281) 483–4871; fax (281) 244–8452.

NASA Case No. MSC–23178–1: Deceleration-Limiting Roadway Barrier;
NASA Case No. MSC–23193–1: Passive Tracking System and Method;
NASA Case No. MSC–23307–1: Detector Apparatus And Method;
NASA Case No. MSC–22980–2: Bubble Monitoring Apparatus;
NASA Case No. MSC–22980–3: Bubble Testing System;
NASA Case No. MSC–22980–4: Tissue Phantom Testing System;
NASA Case No. MSC–22980–5: Bubble Generating Testing System;
NASA Case No. MSC–23309–1: Method And Apparatus For Monitoring Oxygen Partial Pressure In Air Masks;
NASA Case No. MSC–22839–1: Locating Concealed Objects Using Spectral Signatures;
NASA Case No. MSC–22953–2: Method And Apparatus For Reducing The Vulnerability Of Latches To Single Event Upsets;
NASA Case No. MSC–22953–3: Method And Apparatus For Reducing The Vulnerability Of Latches To Single Event Upsets;
NASA Case No. MSC–22970–2: Solar Powered Refrigeration System;
NASA Case No. MSC–22970–3: Solar Powered Refrigeration System;
NASA Case No. MSC–23092–1: Advanced, Large Volume, Highly Loaded, Hybrid Inflatable Pressure Vessel;
NASA Case No. MSC–23228–1: Distributed Antenna System And Method;
NASA Case No. MSC–23154–1: A Real-Time High Frequency QRS Electrocardiograph;
NASA Case No. MSC–23311–1: Mass Measurement During Fluid Flow Using An Integrated Sonic/Microwave Detector.

Dated: September 20, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–24529 Filed 9–26–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–114)]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Bryan Geurts, Goddard Space Flight Center, Mail Code 503, Greenbelt, MD 20771; telephone (301) 286–7351; fax (301) 286–9502.

NASA Case No. GSC–13817–4: Application Of HHT For Acoustical Signal Analysis: With Special Emphases On Speech Analysis, Synthesis, Identification, Enhancement, And Machine Health Monitoring;
NASA Case No. GSC–13817–5: Empirical Mode Decomposition Apparatus, Method And Article Of Manufacture For Analyzing Biological Signals And Performing Curve Fitting;
NASA Case No. GSC–14147–2: Process For Producing High Quality Optically Polished Surfaces On Bare Aluminum Substrates;
NASA Case No. GSC–13905–1: 1-Way Bearing;
NASA Case No. GSC–14413–1: Thrust Rollers;
NASA Case No. GSC–14330–1: Method And Apparatus For Two-Dimensional Absolute Optical Encoding;
NASA Case No. GSC–14435–1: Innovative Manufacturing Procedure For Low Cost And High Quality Carbon Nanotubes;
NASA Case No. GSC–14463–1: Autonomous Navigation System Based On GPS And Magnetometer Data (GPS–MAGNAV);
NASA Case No. GSC–14473–1: A Space-Based Internet Protocol System For Vehicle Tracking, Systems Monitoring And Control;
NASA Case No. GSC–14305–1: Method For Implementation Of Recursive Hierarchical Segmentation On Parallel Computers;
NASA Case No. GSC–13874–2: Adhesive Bubble Removal Method And Apparatus For Fiber Optic Applications;
NASA Case No. GSC–14087–1: Using The Global Positioning Satellite System To Determine Attitude Rates Using Doppler Effects;
NASA Case No. GSC–14409–1: Standard Autonomous File Server (SAFS).

Dated: September 20, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–24530 Filed 9–26–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–119)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, October 31, 2002, 9 a.m. to 12 Noon Central Time.

ADDRESSES: Nassau Bay Hilton, 3000 NASA Road 1, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Lengyel, Aerospace Safety Advisory Panel Executive Director, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0391, if you plan to attend.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room (40). The agenda for the meeting is to conduct deliberations on CY'02 fact-finding activities and trip reports in preparation for the drafting of the Panel's annual report.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 23, 2002.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–24528 Filed 9–26–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

NARA Electronic Records Archives (ERA) User Conference

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of meeting.

SUMMARY: NARA is in the planning stages to build a digital archives that will preserve U.S. Government records of continuing value and make them available electronically to anyone, at any time, in any place, for as long as needed. NARA invites those who are interested to participate in a user conference to provide feedback concerning our strategic response to the challenge of preserving, managing, and accessing electronic records.

DATES: Registrations must be received by October 11, 2002.

The conference is scheduled to be held on November 8, 2002 from 8:30 a.m. until 3:30 p.m.

ADDRESSES: National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: James McAlpin at (301) 837–0443.

SUPPLEMENTARY INFORMATION: Registration is limited. The registration form and additional information is on the NARA Web site at *www.archives.gov/electronic_records_archives/.*

Dated: September 23, 2002.

Kimberly Richardson,

Federal Register Liaison Official.

[FR Doc. 02–24614 Filed 9–26–02; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–44]

Arizona Public Service Company; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding a Proposed Exemption

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.72(d) to Arizona Public Service Company (APS or applicant). The requested exemption would allow APS to maintain a single set of spent fuel, high-level radioactive waste, and reactor-related GTCC waste records in accordance with the requirements of 10 CFR 50.71(d)(1), for the Independent Spent Fuel Storage Installation (ISFSI) at the Palo Verde Nuclear Generating Station (PVNGS) in Maricopa County, Arizona.

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated September 4, 2001, APS requested an exemption from the requirement in 10 CFR 72.72(d) which states in part that, ''Records of spent fuel, high-level radioactive waste, and reactor-related GTCC waste containing special nuclear material meeting the requirements in paragraph (a) of this section must be kept in duplicate. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records.''

The proposed action before the Commission is whether to grant this exemption pursuant to 10 CFR 72.7.

*Need for the Proposed Action:*The applicant stated that ISFSI spent-fuel, high-level radioactive waste, and reactor-related GTCC waste records will be maintained in a manner consistent with the records of the PVNGS, which are stored in compliance with the requirements established in 10 CFR 50.71(d)(1). No exemption is requested from the 10 CFR 72.72(d) requirements for the records retention period requirements. The applicant seeks to provide consistency in recordkeeping maintenance for the PVNGS ISFSI spent fuel, high-level radioactive waste, and reactor-related GTCC waste records. The exemption request will also preclude the need to construct and operate a separate, second records storage facility to store a duplicate set of spent-fuel, high-level radioactive waste, and reactor-related GTCC waste records.

10 CFR 50.71(d)(1) provides requirements for the maintenance of nuclear power plant records. The regulation states:

> Records which must be maintained pursuant to this part may be the original or a reproduced copy or microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by the Commission regulations. The record may also be stored in electronic media with the capability of producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

Regulatory Guide 1.88, ''Collection, Storage, and Maintenance of Nuclear Power Plant Quality Assurance Records,'' establishes guidance for the storage of nuclear plant quality assurance records. APS plans to implement Revision 2 of Regulatory Guide 1.88, with minor exceptions described in the PVNGS Updated Final Safety Analysis Report, Section 1.8.

The requirements in ANSI N45.2.9–1974 have been endorsed by the NRC in Regulatory Guide 1.88 as adequate for satisfying the recordkeeping requirements of 10 CFR Part 50, Appendix B, which states in part that ''records shall be identifiable and retrievable.'' Additionally, conditions in 10 CFR Part 50, Appendix B establish that ''[c]onsistent with applicable regulatory requirements [including 10 CFR 50.71(d)(1)], the applicant shall establish requirements concerning record retention, such as duration, location, and assigned responsibility.'' ANSI N.45.2.9–1974 also satisfies the requirements of 10 CFR 72.72 by providing for adequate maintenance of records regarding the identity and history of the spent fuel in storage. Such records would be subject to and need to be protected from the same types of degradation mechanisms as nuclear power plant Quality Assurance records.

Environmental Impacts of the Proposed Action: An exemption from the requirement to store a duplicate set of ISFSI records at a separate location has no impact on the environment. Storage of records does not change the methods by which spent fuel will be handled and stored at the PVNGS ISFSI and does not change the amount of effluents, radiological or non-radiological, associated with the ISFSI.

Alternative to the Proposed Action: Since there is no environmental impact associated with the proposed action, alternatives are not evaluated other than the no action alternative. The alternative to the proposed action would be to deny approval of the exemption and, therefore, not allow storage of ISFSI spent fuel records at a single qualified record storage facility. The no action alternative would require the applicant to construct or identify a separate storage facility; therefore, the environmental impacts of the proposed action would be less than, or the same as, the no action alternative.

Agencies and Persons Consulted: On July 18, 2002, Arizona State official, Mr. William Wright, Program Manager of Radioactive Materials of the Arizona Radiation Regulatory Agency, was contacted regarding the environmental assessment for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in

accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting the exemption from 10 CFR 72.72(d), so that APS may store spent fuel records for the ISFSI in a single records storage facility which meets the requirements of ANSI N.45.2.9–1974, with the given exception listed in the PVNGS Updated Final Safety Analysis Report Section 1.8, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not necessary.

For further details with respect to this exemption request, see the APS letter dated September 4, 2001. The request for exemption was docketed under 10 CFR Part 72, Docket 72–44. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 20th day of September 2002.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–24615 Filed 9–26–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Pitney Bowes Credit Corporation, 5.75% Notes (Due 2008)) From the New York Stock Exchange, Inc. File No. 1–6661

September 23, 2002.

Pitney Bowes Credit Corporation, a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 5.75% Notes (Due 2008) (''Security''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

The Issuer stated in its application that is has complied with all applicable laws in effect in the state of Delaware, in which it is incorporated, and with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

The Board of Trustees (''Board'') of the Issuer approved a resolution on August 30, 2002 to withdraw the Issuer's Security from listing on the NYSE. In making the decision to withdraw its Security from the NYSE, the Issuer noted that: (i) There are a limited number of registered holders of the Security; and (ii) delisting and deregistration of the Security will result in significant cost savings for the Issuer.

Any interested person may, on or before October 15, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–24606 Filed 9–26–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25740; 812–11618]

Fidelity Concord Street Trust, et al.; Notice of Application

September 23, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under sections 6(c), 12(d)(1)(J) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for exemptions from sections 12(d)(1), 15(a) and 17(a) of the Act and rule 18f–2 under the Act and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants seek an order to permit (a) certain registered open-end investment companies to hire subadvisers and materially amend subadvisory agreements without shareholder approval; (b) the registered investment companies to invest cash collateral (''Cash Collateral'') received in connection with a securities lending program (''Lending Program'') in shares of affiliated registered and private investment companies (''Investment Funds''); and (c) an affiliated entity, acting as securities lending agent (''Agent'') for the registered investment companies to receive fees based on a share of the revenue generated from the securities lending activities.

APPLICANTS: Fidelity Concord Street Trust, Fidelity Commonwealth Trust, Variable Insurance Products Fund II (collectively, the ''Companies'') and Fidelity Management & Research Company (''FMR'').

FILING DATES: The application was filed on May 19, 1999, and an amendment was filed on September 23, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 15, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12D2–2(D).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(l).

may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Each Company is registered under the Act as an open-end management investment company and is organized as a Massachusetts business trust. Each Company offers shares of one or more series (''Funds'') each with its own investment objectives, policies and restrictions. Shares of Variable Insurance Products Fund II are offered solely to insurance company separate accounts, which are used to fund variable annuity contracts and variable life insurance contracts. FMR is an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''). Applicants request that the relief extend to any person controlling, controlled by, or is under common control with FMR (an ''Adviser'') and any additional series of the Companies organized in the future and advised by an Adviser (''Future Funds,'' collectively with the Funds, the ''Subadvised Funds''), provided that such Future Funds operate in substantially the same manner as described in the application.[1]

2. The Adviser acts as investment adviser to each Fund under an investment advisory agreement between the Adviser and the Companies on behalf of the Funds (''Advisory Agreement''). The Advisory Agreement was approved by the Companies'' board of trustees (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in sections 2(a)(19) of the Act (''Independent Trustees'') and by the shareholders of the Funds. Under the terms of the Advisory Agreement, the Adviser provides each Fund with investment research, advice and supervision and administrative services. For its services, the Adviser receives a management fee at an annual rate based on a percentage of the average daily net assets of each Fund.

3. The Advisory Agreements authorize the Adviser to enter into separate subadvisory agreements (''Subadvisory Agreements'') with one or more investment subadvisers (''Subadvisers''). The specific investment decisions for each Subadvised Fund are made by a Subadviser, which has discretionary authority to invest the assets of a particular Subadvised Fund, subject to the general supervision and oversight by the Adviser and the Board.[2] The Adviser retains the responsibility to oversee Subadvisers and to recommend to the Board the hiring, termination and replacement of the Subadvisers. The Adviser selects Subadvisers based on the Adviser's evaluation of the Subadvisers' skills and abilities in managing assets. The Adviser pays the Subadvisers the fees specified in the Subadvisory Agreements out of the fees paid by the Subadvised Funds to the Adviser.

4. In connection with the Lending Program, an Agent will enter into an agreement (''Securities Lending Agreement'') with each Subadvised Fund. Each Subadvised Fund that participates in the Lending Program is referred to as a ''Lending Fund.'' The Securities Lending Agreement will authorize the Agent to enter into agreements (''Borrowing Agreement'') with entities that are designated by the Agent and approved by the Subadvised Fund as eligible to borrow securities (''Borrowers'') to lend them portfolio securities of the Lending Funds. Pursuant to the Borrowing Agreement, the Agent delivers Lending Funds' portfolio securities to Borrowers in exchange for Cash Collateral or other collateral, such as U.S. government securities.

5. The Securities Lending Agreement will authorize and instruct the Agent, as agent for the Subadvised Fund, to invest the Cash Collateral in accordance with specific guidelines or instructions provided by the Subadvised Fund. These guidelines or instructions will identify the particular Investment Funds and other investment vehicles, instruments and accounts, if any, in which cash collateral may be invested, and the maximum and minimum amounts of Cash Collateral that may be invested in the Investment Funds and other authorized investments. For its services as securities lending agent, the Agent will be compensated based on a percentage of the revenue generated by the Subadvised Funds' participation in the Lending Program.[3]

6. Investment Funds will be open-end management investment companies registered under the Act (''Registered Investment Funds''). Investment Funds also may include investment companies that are exempt from registration under the Act in reliance on sections 3(c)(1) or 3(c)(7) of the Act (''Private Investment Funds''). Each Investment Fund will be established for the investment of cash collateral and advised by an Agent serving as the securities lending agent for that Lending Fund, or an entity controlling, controlled by, or under common control with the Agent. The Investment Funds will invest in high quality money market instruments, short-term bonds and such other investments that are consistent with capital preservation and the increased needs of liquidity associated with securities lending transactions.

7. Applicants request relief to permit: (a) The Adviser and the Subadvised Funds to hire Subadvisers and materially amend the Subadvisory Agreements without shareholder approval; (b) the Lending Funds to use Cash Collateral to purchase shares of the Investment Funds and the Investment Funds to redeem shares from the Lending Funds; and (c) an Agent to receive fees based on a share of the revenue generated by the securities lending activities of a Lending Fund.

Applicants' Legal Analysis

A. Relief To Hire Subadvisers and Materially Amend Subadvisory Agreements

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy

[1] Each existing Fund advised by the Adviser that currently intends to rely on the requested order has been named as an applicant. Any Future Fund that relies on the requested order will do so only in accordance with the terms and conditions of the application. Each Adviser will be an investment adviser registered under the Advisers Act or exempt from registration.. Applicants represent that if the name of any Subadvised Fund should, at any time, contain the name of a Subadviser (as defined below), it will also contain the name of the Adviser, which will appear before the name of the Subadviser.

[2] Each Subadviser will be registered or exempt from registration under the Advisers Act.

[3] Deutsche Bank Trust Company Americas (''DBTCA'') currently serves as the Subadvised Funds' lending agent agent in reliance on a prior exemptive order, Bankers Trust Company, Investment Company Act release Nos. 23370 (July 31, 1998) (notice) and 23402 (Aug. 26, 1998) (order). Applicants are requesting relief to participate in a Lending Program with respect to an Agent other than DBTCA.

and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f–2 under the Act to permit the Adviser and the Subadvised Funds, subject to approval by the Board, to enter into and materially amend Subadvisory Agreements without shareholder approval. The requested relief would not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Company, the Subadvised Fund or the Adviser, other than by reason of serving as a Subadviser to one or more of the Subadvised Funds (''Affiliated Subadviser'').

3. Applicants assert that investors expect the Adviser and the Board to select one or more Subadvisers for the Subadvised Funds and look to the Adviser when they have questions or concerns about the Subadvised Fund's management or investment performance. Applicants contend that the role of the Subadviser, from the perspective of the investor, is comparable to that of the individual portfolio managers employed by other investment advisory firms. Applicants also contend that requiring shareholder approval of Subadvisory Agreements would impose expenses and unnecessary delays on the Subadvised Funds and could prevent the prompt implementation of actions deemed advisable by the Adviser and the Board. Applicants note that the Advisory Agreements will continue to be fully subject to section 15 of the Act and rule 18f–2 under the Act.

B. Investment of Cash Collateral by the Lending Funds in the Investment Funds

1. Section 12(d)(1)(A) of the Act provides, in relevant part, that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Lending Funds to invest Cash Collateral in the Registered Investment Funds in excess of the limits in sections 12(d)(1)(A) and (B).

3. Applicants represent that the Investment Funds will be designed as vehicles to be used specifically in connection with securities lending transactions. Applicants state that the proposed arrangement will not result in inappropriate layering of either sales charges or investment advisory fees. Shares of the Investment Funds sold to the Lending Funds will not be subject to a sales load, redemption fee, asset-based distribution fee, or service fee. Applicants further state that since investment advisory fees are calculated on the net, rather than the total, assets of the Lending Funds, and since Cash Collateral does not increase net assets, the Lending Funds would not pay duplicative advisory fees with respect to investments made with Cash Collateral. Applicants also state that each Investment Fund will be operated for the purpose of providing the necessary liquidity to satisfy the demands of the Lending Program and, therefore, will not be susceptible to control through the threat of large scale redemptions. Finally, applicants state that an Investment Fund will not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by condition 7 of the conditions regarding participating in a Lending Program below. For these reasons, applicants state that the proposed arrangement will not give rise to the abuses that sections 12(d)(1)(A) and (B) were intended to prevent.

4. Section 17(a) of the Act makes it unlawful for any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such person (''second-tier affiliate''), acting as principal, to sell or purchase any security to or from such investment company. Section 2(a)(3) of the Act defines an affiliated person to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, as well as any person directly or indirectly controlling, controlled by, or under common control with, the other person, and in the case of an investment company, its investment adviser. The Adviser is an affiliated person of each Lending Fund under section 2(a)(3). Because the Lending Funds share a common investment adviser, the Lending Funds may be deemed to be under ''common control'' and therefore affiliated persons of each other. In addition, a Lending Fund could own more than 5% of the outstanding voting securities of an Investment Fund. As a result, each Lending Fund and the Investment Fund may be deemed to be affiliated persons (or second-tier affiliates) of each other Lending Fund. As a result, applicants request relief from section 17(a) under sections 6(c) and 17(b) to permit the sale of shares of the Investment Funds to the Lending Funds and the redemption of the shares by the Lending Funds from the Investment Funds.

5. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned and the proposed transaction is consistent with the general policy of the Act.

6. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that the Lending Funds will be treated like any other shareholders in the Investment Funds, and purchase and sell shares of the Investment Funds on the same terms and on the same basis, including price, as all other shareholders of the Investment Funds. Applicants assert that the proposed transactions comply with each Lending Fund's investment restrictions and policies. Applicants state that Cash Collateral of a Lending Fund that is a money market fund will not be used to acquire shares of any Investment Fund that does not comply with rule 2a–7 under the Act. Applicants further state that the investment of Cash Collateral will comply with all present and future Commission and staff positions concerning securities lending. Applicants also state that the Private Investment Funds will comply with the major substantive provisions of the Act, including the prohibitions against affiliated transactions, leveraging and issuing senior securities, and rights of redemption.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any

affiliated person of or principal underwriter for a registered investment company or any second-tier affiliate, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates. Rule 17d–1 permits the SEC to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants.

8. Applicants state that the Lending Funds (by purchasing and redeeming shares of the Investment Funds), a Subadviser (by managing the portfolio securities of the Subadvised Funds while at the same time acting as Agent for the Lending Funds), an Agent (by acting as lending agent, investing Cash Collateral in the Investment Funds, and receiving a portion of the revenue generated by securities lending transactions), and the Investment Funds (by selling shares to and redeeming shares from the Lending Funds) could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act. Applicants submit that the proposed investments by the Lending Funds in the Investment Funds meet the standards of rule 17d–1 for the reasons discussed above, particularly that the Lending Funds will invest in the Investment Funds on the same basis as any other shareholder.

C. Payment of Fees by a Lending Fund to an Agent

1. As noted above, section 17(d) of the Act and rule 17d–1 under the Act generally prohibit joint transactions involving investment companies and their affiliated persons unless the SEC has approved the transaction. Applicants state that an Agent may serve as a Subadviser for certain series of a particular Company,[4] while other series of that Company could be advised by entities that are not affiliated with the Agent. Each series of the Company could be deemed to be under common control, and thus an affiliated person of each other series. The Agent thus could be deemed an affiliated person of any series for which it acts as Subadviser and a second-tier affiliate of those series for which it does not act as Subadviser. Moreover, an Agent that is a bank may own more than 5% of the voting securities of a Lending Fund in a fiduciary capacity, and thus be an affiliated person of that Lending Fund and a second-tier affiliate of those series of a Company in which it does not own a 5% interest. Further, if a Lending Fund acquired more than 5% of the outstanding voting securities of an Investment Fund advised by the Agent, the Agent could be deemed a second-tier affiliate of the Lending Fund. As a result, the prohibitions of section 17(d) and rule 17d–1 would apply to activities involving the series and the Agent, including the Agent's activities as lending agent and the receipt of a share of the revenue from the series' lending activities. Applicants request relief to permit an Agent acting as lending agent to a Lending Fund to receive a percentage of the revenue generated by the Lending Fund's participation in the Lending Program. Each Agent will have an established securities lending program with numerous other unaffiliated institutional investors participating as lenders in the Agent's program.

2. Applicants propose that each Lending Fund will adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with the Agent will meet the standards of rule 17d–1:

(a) In connection with the approval of the Agent as lending agent for a Lending Fund and implementation of the proposed fee arrangement, a majority of the Board (including a majority of the Independent Trustees) of the Lending Fund will determine (i) the Securities Lending Agreement with the Agent is in the best interests of the Lending Fund and its shareholders; (ii) the services to be performed by the Agent are appropriate for the Lending Fund; (iii) the nature and quality of the services performed by the Agent are at least equal to those provided by others offering the same or similar services for similar compensation; and (iv) the fees for the Agent's services are within the range of, but in any event no higher than, the fees charged by the Agent for services of the same nature and quality provided to unaffiliated parties.

(b) Each Lending Fund's contract with the Agent for lending agent services will be reviewed annually by the Board and will be approved for continuation only if a majority of the Board (including a majority of the Independent Trustees) makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of an arrangement whereby the Agent will be compensated as lending agent based on a percentage of the revenue generated by a Lending Fund's participation in the Program, the Board will secure a certificate from the Agent attesting to the factual accuracy of clause (iv) in paragraph (a) above. In addition, the Board will request and evaluate, and the Agent will furnish, such information and materials as the Board, with and upon the advice of agents, consultants, or counsel, determines to be appropriate in making the findings referred to in paragraph (a) above. Such information shall include, in any event, information concerning the fees charged by the Agent to other institutional investors for performing similar services.

(d) The Board, including a majority of the Independent Trustees, will (i) no less frequently than quarterly determine, on the basis of reports submitted by the Agent, that the loan transactions during the proceeding quarter were conducted in compliance with the conditions and procedures set forth in the application; and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Lending Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and modifications thereto) described in the application or otherwise followed in connection with lending securities under the Lending Program; and (ii) maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Lending Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

[4] The personnel who will provide day-to-day lending agency services to the Subadvised Funds do not and will not provide investment advisory services to the Subadvised Funds, or participate in any way in the selection of the portfolio securities or other aspects of the management of the Subadvised Funds.

A. Relief To Enter Into and Materially Amend Subadvisory Agreements

1. Before a Subadvised Fund may rely on the order requested herein, the operation of the Subadvised Fund in the manner described in the application will be approved by the vote of a majority of its outstanding voting securities (or, if the Subadvised Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account) as defined in the Act, or, in the case of a Future Fund whose public shareholders (or variable contract owners through a separate account) purchased shares on the basis of a prospectus containing the disclosure contemplated by condition number 2 below, by the sole initial shareholder(s) before offering shares of that Subadvised Fund to the public (or variable contract owners through a separate account).

2. Each Subadvised Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Subadvised Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility to oversee Subadvisers and recommend their hiring, termination, and replacement.

3. Before relying on the requested Manager of Managers relief, each Subadvised Fund that sought its shareholders' approval to operate in the manner described in the Application prior to the date of the requested order and subsequently sold shares based on a prospectus that does not comply with condition 2 above will provide its shareholders (or, if the Subadvised Fund serves as a funding medium for any sub-account of a registered separate account, then the unitholders of the sub-account) with at least 30 days prior written notice of (a) the substance and effect of the Manager of Managers relief and (b) the fact that the Subadvised Fund intends to employ the management structure described in the Application.

4. At all times, a majority of each Company's Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

5. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders (or, if the Subadvised Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account) of the applicable Subadvised Fund.

6. When a Subadviser change is proposed for a Subadvised Fund with an Affiliated Subadviser, the Board of the corresponding Company, including a majority of the Independent Trustees, will make a separate finding, reflected in the Company's Board minutes, that the change is in the best interests of the Subadvised Fund and its shareholders (or, if the Subadvised Fund serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Subadvised Fund and the unitholders of any sub-account) and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. Within 90 days of the hiring of any new Subadviser, shareholders (or, if the Subadvised Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) will be furnished all information about a new Subadviser that would be contained in a proxy statement, including any change in such disclosure caused by the addition of a new Subadviser. Each Subadvised Fund will meet this condition by providing shareholders (or, if the Subadvised Fund serves as a funding medium for any sub-account of a registered separate account, then by providing unitholders of the sub-account) with an Information Statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A of the Securities Exchange Act of 1934 within 90 days of the hiring of a Subadviser.

8. The Adviser will provide general management services to each Subadvised Fund, including overall supervisory responsibility for the general management and investment of each Subadvised Fund's portfolio, and subject to review and approval by the Board, will (a) set the Subadvised Fund's overall investment strategies; (b) select Subadviser(s); (c) monitor and evaluate the performance of Subadviser(s); (d) ensure that the Subadviser(s) comply with each Subadvised Fund's investment objectives, policies and restrictions; and (e) allocate and, where appropriate, reallocate a Subadvised Fund's assets among its Subadvisers.

9. No trustee, director or officer of a Company or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that trustee, director or officer) any interest in a Subadviser except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

A. Lending Program

1. The Lending Program of each Lending Fund will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

2. The approval of a Lending Fund's Board, including a majority of the Independent Trustees, will be required for the initial and subsequent approvals of the Agent's service as securities lending agent for the Lending Fund under the Lending Program, for the institution of all procedures relating to the Lending Program as it relates to the Lending Fund, and for any periodic review of loan transactions for which the Agent acted as lending agent under the Lending Program.

3. A majority of a Lending Fund's Board, including a majority of the Independent Trustees, will initially and at least annually thereafter determine that the investment of Cash Collateral in shares of the Investment Funds is in the best interest of shareholders of the Lending Fund.

4. Investment in shares of the Investment Funds will be in accordance with each Lending Fund's respective investment restrictions and will be consistent with each Lending Fund's policies as set forth in its prospectus and statement of additional information. A Lending Fund that complies with rule 2a–7 under the Act will not invest its Cash Collateral in an Investment Fund that does not comply with rule 2a–7 under the Act.

5. Investment in shares of an Investment Fund by a particular Lending Fund will be in accordance with the guidelines regarding investment of Cash Collateral specified by the Lending Fund in the Securities Lending Agreement. A Lending Fund's Cash Collateral will be invested in a particular Investment Fund only if that Investment Fund has been approved for investment by the Lending Fund and if that Investment Fund invests in the types of instruments that the Lending

Fund has authorized for the investment of its Cash Collateral.

6. The shares of the Investment Funds that are sold to and redeemed from the Lending Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1, or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers).

7. An Investment Fund will not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act; except to the extent that the Investment Fund (a) receives securities of another investment company as a dividend or as a result of a plan or reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act) or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting the Investment Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes or (ii) lend cash to another fund.

8. A Lending Fund may enter into a Securities Lending Agreement that permits the investment of its cash collateral in a Private Investment Fund only if the Securities Lending Agreement provides that:

(a) Any Private Investment Fund that is operated as a ''money market fund'' (''Private Money Market Fund'') will comply with rule 2a–7 under the Act and will value its shares, as of the close of business on each business day, using the ''amortized cost method,'' as defined in rule 2a–7, to determine the net asset value per share of the Private Money Market Fund. In addition, the Private Money Market Fund will, subject to the approval of the Private Money Market Fund's board of directors or trustees (collectively with the board of directors or trustees of any Private Investment Fund, the ''Trustee''), adopt the monitoring procedures described in rule 2a–7(c)(7) under the Act and the Private Money Market Fund's adviser (collectively with the adviser to any Private Investment Fund, the ''Private Fund Adviser'') will comply with these procedures and take any other actions as are required to be taken pursuant to these procedures. The Lending Funds may only purchase shares of the Private Money Market Fund if the Private Fund Adviser determines on an ongoing basis that the Private Money Market Funds is in compliance with rule 2a–7. The Private Fund Adviser will preserve for a period of not less than six years from the date of determination, the first two years in an easily accessible place, a record of the determination and the basis upon which the determination was made. This record will be subject to examination by the SEC and its staff;

(b) The Private Investment Fund will comply with the requirements of sections 17(a), (d), and (e), and 18 of the Act as if the Private Investment Fund were a registered open-end investment company;

(c) With respect to all redemption requests made by a Lending Fund, the Private Investment Fund will comply with section 22(e) of the Act;

(d) The Private Fund Adviser shall, subject to the approval by the Trustee, adopt procedures designed to ensure that the Private Fund complies with sections 17(a), (d), (e), 18, and 22(e) of the Act. The Private Fund Adviser also will periodically review and periodically update as appropriate such procedures and will maintain books and records describing such procedures and will maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be kept pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the SEC and its staff;

(e) The net asset value per share with respect to Private Investment Fund shares will be determined separately for each Private Investment Fund by dividing the value of the assets belonging to that Private Investment Fund, less the liabilities of that Private Investment Fund, by the number of shares outstanding with respect to that Private Investment Fund; and

(f) Each Lending Fund will purchase and redeem Private Investment Fund shares as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Private Investment Fund. A separate account will be established in the shareholder records of the Private Investment Fund for the account of each Lending Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–24607 Filed 9–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 30, 2002:

Closed Meetings will be held on Tuesday, October 1, 2002, at 10 a.m. and Thursday, October 3, 2002, at 10 a.m.

Commissioner Campos, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, October 1, 2002 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Formal orders of investigations.

The subject matter of the Closed Meeting scheduled for Thursday, October 3, 2002 will be:

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: September 25, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–24755 Filed 9–25–02; 2:37 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46521; File No. SR–NASD–2002–33]

Self Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Fees for Nasdaq Data Entitlement Packages

September 20, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 7, 2002, the National Association of Securities Dealers, Inc. (''NASD'') through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On April 25, 2002, Nasdaq filed Amendment No. 1 that entirely replaced the original rule filing.[3] On July 29, 2002, Nasdaq filed Amendment No. 2 that entirely replaced the original rule filing and Amendment No. 1.[4] On August 23, 2002, Nasdaq filed Amendment No. 3 that entirely replaced the original rule filing and Amendment Nos. 1 and 2.[5] On September 13, 2002, the Nasdaq submitted Amendment No. 4 that entirely replaced the original rule filing and Amendment Nos. 1, 2, and 3.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010. Following approval by the Commission, the proposed rule change will become effective upon notice to vendors 30 days after the Nasdaq Order Display Facility, hereafter referred to as ''SuperMontage,'' begins operation.[7] Below is the text of the proposed rule change (including footnotes). Proposed new language is in italics; proposed deletions are in brackets.[8]

* * * * *

Rule 7010. Charges for Services and Equipment.

(q) Nasdaq Data Entitlement Packages

(1) DepthView and PowerView

The DepthView entitlement package contains all information disseminated through the Nasdaq Aggregated Depth at Price (ADAP) data feed: The five best price levels in Nasdaq on both the bid and offer side of the market. Each price level is dynamically updated and displays the aggregate size of ''displayed'' trading interest, attributable and non-attributable, at each price level. The Nasdaq PowerView entitlement package consists of DepthView and the Nasdaq Quotation Dissemination Service (NQDS) feed.

(A)(i) Except as provided in (1)(A)(ii) below, for DepthView, there will be a $50.00 monthly charge to be paid for each controlled device.[9]

(ii) the charge to be paid by a non-professional[10] *subscriber for each controlled device shall be $25.00 per month.*

(B)(i) Except as provided in paragraph (1)(B)(ii) below, for PowerView, there will be a $75.00 monthly charge to be paid for each controlled device.[11]

(ii) the charge to be paid by a non-professional[12] *subscriber for each 2 controlled device will be $29.00 per month.*[13]

(C) Distributors[14] *of ADAP data (either through DepthView or PowerView) shall pay a charge of $1,000.00 per month.*

(2) TotalView

The NQDS Prime data feed (hereinafter referred to as ''Prime'') consists of the individual Nasdaq SuperMontage participant orders and quotes that make up the top five price levels in the SuperMontage System. The TotalView entitlement package includes the information disseminated through the Prime data feed in addition to the data contained in the PowerView entitlement package.

(A) Distributors of TotalView data shall pay a charge of $7,500.00 per month.

(B) For TotalView, there will be a charge of $150.00 per month per controlled device.[15]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Mary M. Dunbar, Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 25, 2002.

[4] *See* Letter from Mary M. Dunbar, Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated July 26, 2002.

[5] *See* Letter from Mary M. Dunbar, Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 22, 2002.

[6] *See* Letter from Mary M. Dunbar, Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 13, 2002.

[7] It is presently expected that SuperMontage will begin operation on October 14, 2002.

[8] The Commission notes that it made typographical changes to the rule text. Nasdaq has committed to submitting an amendment reflecting those changes. Telephone conversation between Eleni Constantine, Associate General Counsel, Office of General Counsel, Nasdaq and Susie Cho, Special Counsel, Division, Commission, September 16, 2002.

[9] *A controlled device is any device that a distributor of the Nasdaq Data Entitlement Package(s) permits to: (a) Access the information in the Nasdaq Data Entitlement Package(s); or (b) communicate with the distributor so as to cause the distributor to access the information in the Nasdaq Data Entitlement Package. If a controlled device is part of an electronic network between computers used for investment, trading or order routing activities, the burden will be on the distributor to demonstrate that the particular controlled device should not have to pay for an entitlement. For example, in some display systems the distributor gives the end user a choice to see the data or not—a user that chooses not to see it would not be charged. Similarly, in a non-display system, users of controlled devices may have a choice of basic or advanced computerized trading or order routing services, where only the advanced version uses the information. Customers of the basic service would be excluded from the entitlement requirement.*

[10] *A ''non-professional'' is a natural person who is neither: (a) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an ''investment advisor'' as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (c) employed by a bank or other organization exempt from registration under federal or state securities law to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.*

[11] *So long as NQDS is subject to the Nasdaq Unlisted Trading Privileges (UTP) Plan, the revenues garnered from use of PowerView that are directly attributable to the sale of NQDS under the currently approved pricing for NQDS will be shared pursuant to the UTP Plan.*

[12] *See footnote 10 (definition of non-professional).*

[13] *See footnote 11 (sharing of revenue pursuant to the UTP Plan).*

[14] *A distributor of a Nasdaq data feed is any firm that receives a Nasdaq data feed directly from Nasdaq or indirectly through another vendor and then distributes it either internally or externally. All distributors must execute a Nasdaq distributor agreement. Nasdaq itself is a vendor of its data feed(s) and will execute a Nasdaq distributor agreement and pay the distributor charge.*

[15] *So long as NQDS is subject to the Nasdaq UTP Plan, the revenues from TotalView that are directly attributable to the sale of NQDS under the currently approved pricing for NQDS will be shared pursuant to the UTP Plan.*

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Data Feeds

Nasdaq believes that it has consistently supported the broadest, most effective dissemination of market information to public investors. In its multiple rule filings regarding SuperMontage,[16] Nasdaq described new data feed products that it represents will vastly expand the ability of market participants to see and show trading interest: The Nasdaq Prime data feed, which will be available through a Nasdaq entitlement package called ''TotalView,'' and the Aggregate Depth at Price (''ADAP'') data feed, available through ''DepthView'', ''PowerView'', and ''TotalView''.[17] As the SuperMontage rule filings and the SEC approvals set out in detail, TotalView will provide, on a real-time basis: (1) All individual attributable quote/order information at the five best price levels displayed by the Nasdaq SuperMontage system; (2) the aggregate size of all unattributed quotes or orders at each of the top five price levels, on both sides of the market, that are in the SuperMontage system; (3) the aggregate attributable and unattributable quote and orders at each of the top five price levels, on both sides of the market, that are in the SuperMontage system; (4) the quote and order data found in the Nasdaq Quotation Dissemination Service (''NQDS'') [18] data feed, including the best attributed quotation from each Nasdaq participant, and (5) the Nasdaq Inside Price. By using TotalView, vendors will be able to integrate the expanded quote and order information that is provided in the Nasdaq Prime feed with the other Nasdaq data in the TotalView package.

Subject to the requirements of the vendor display rule,[19] subscribers who do not need all the information in TotalView can purchase certain portions separately. DepthView will provide the aggregated size at each of the top five price levels, both on the bid and the ask, within the Nasdaq SuperMontage system. Nasdaq plans to promote DepthView broadly as the window into Nasdaq SuperMontage for the trading, investment, and broker communities. DepthView also provides valuable insight into how large an order can be executed immediately within SuperMontage with little or no price impact. Nasdaq believes that the deeper view afforded by the aggregate figures provided by DepthView promote market transparency and allow for more informed choice for the investor. PowerView includes both DepthView and the data available in the NQDS data feed,[20] including the best-attributed quotation from each Nasdaq participant in each Nasdaq National Market and Small Cap Market stock.

Nasdaq is not offering the first two elements of TotalView separately. This is because the key portions of the third and fourth elements of TotalView can be derived from the first two by sophisticated subscribers. In Nasdaq's view, allowing the production of derivative feeds in this uncontrolled manner creates financial risk because there is no sure way Nasdaq would be able to detect whether aggregate data came from Nasdaq or was calculated by the vendor. An incremental package that only offered the portions of TotalView that are not available through PowerView would include only market participants' inferior quotes, at price levels two through five. (Best quotes, including all of price level one, would already be available through Power View.) There is no point in offering such an entitlement separately, since viewing this information on a standalone basis would distort subscribers' view of the market.

Equitable Allocation of Fees

Controlled Device

As noted in footnote 9, the appropriate entitlement charge must be paid for each ''controlled device'' that has the capacity either to access or utilize a particular data feed, whether the controlled device displays the data, ''receives'' it, or has the ability to utilize it even though the data remains ''on'' another device. As noted, controlled devices that are part of a network receiving a particular data feed will be required to pay the entitlement charge unless the distributor demonstrates to Nasdaq that the particular controlled device in fact has no capacity to access or utilize the data feed (because the system agreement precludes it, for example).

TotalView

As noted, TotalView will provide the individual market participants that make up the depth of SuperMontage at each of the top five price levels. TotalView, because it will be significantly more bandwidth intensive than any Nasdaq data entitlement to date, and because of a distinct value it provides to the Nasdaq trading community, is expected to be a niche product for specialized traders. Because of its specialized nature, unique value and high bandwidth requirements, TotalView has been priced to capture that value from a limited number of customers. Accordingly, Nasdaq is not providing a non-professional fee for TotalView at this time.

Nasdaq represents that it has designed the distributor charges for TotalView to encourage transparency and display of the SuperMontage data. First, Nasdaq has kept the base distributor charge as low as possible to promote the widespread adoption of the data feed by market data vendors. Second, by charging the same entitlement charge to all controlled devices that are connected to a system that receives the Prime data, whether or not they choose to display the data, Nasdaq hopes to encourage firms that provide non-display services to choose also to display the data to their customers, since doing so will not cost them any more than not doing so. The pricing rule is intended to create a rebuttable presumption that a controlled device has access to Prime if it is connected to a network that receives Prime data; however, the contract terms will provide a mechanism for vendors to rebut this presumption by providing Nasdaq a system description that states which customers do and do not have access.

DepthView and PowerView

Nasdaq anticipates its users will receive a high value from the depth-of-market information in DepthView, as stated above. Moreover, DepthView requires more processing capacity to calculate its five aggregated price levels on each side, so its price should be commensurate with the processing required to generate the ADAP data feed. Also, the price was chosen after consideration of the prices other major

[16] These rule filings were approved by the Commission in Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) and Securities Exchange Act Release No. 45790 (April 19, 2002), 67 FR 21007 (April 29, 2002).

[17] To the extent Nasdaq acts as a vendor, Nasdaq must comply with the requirements of the vendor display rule. 17 CFR 240.11Ac1–2. Vendors purchasing data feeds from Nasdaq are likewise responsible for their compliance with the vendor display rule.

[18] The NQDS data feed currently consists of: (1) Real-time quotes for each Market Maker and Electronic Communication Network (ECN) in NASDAQ National Market and SmallCap issues; (2) real-time best bid or offer (''BBO'') quotes for each regional UTP exchange that quotes in NASDAQ-listed issues; and (3) real-time National BBO quote appendages for NASDAQ National Market and SmallCap issues. Telephone conversation between Eleni Constantine, Associate General Counsel, Office of General Counsel, Nasdaq and Susie Cho, Special Counsel, Division, Commission, September 19, 2002.

[19] 17 CFR 240.11Ac1–2.

[20] *See* note 19, *supra.*

exchanges charge for aggregated order data.[21]

Nasdaq anticipates that offering a significantly discounted non-professional rate for DepthView and PowerView will provide an opportunity for many investors to take advantage of the transparency offered by these new feeds.

Redistribution

There will be no restrictions regarding redistribution of the data in TotalView, DepthView, or PowerView to qualified vendors and broker-dealers that have entered into distributor agreements with Nasdaq. As is current practice, the display requirements that Nasdaq chooses to place on these data feeds will be covered under the Distributor Agreements we enter into with distributors of Nasdaq data, rather than being subject to rule. The display requirements will be minimal and are not expected specifically to preclude vendors from blending this data with data from other sources to create an integrated feed. However, Nasdaq plans to require vendors specifically to identify the data from the feeds as data coming from Nasdaq, so as to distinguish it from data that they may get from other sources. The specific display requirements are available on NasdaqTrader.com.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[22] in general and with Section 15A(b)(5) of the Act,[23] in particular, which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[21] For example, NYSE's Open Order Book, which was approved by the SEC in December 2001, has a monthly charge of $5,000.00 for access and $50.00 per display. *See* Securities Exchange Act Release No. 45138 (December 7, 2001), 66 FR 64895 (December 14, 2001).

[22] 15 U.S.C. 78*o*–3.

[23] 15 U.S.C. 78*o*–3(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–33 and should be submitted by October 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–24570 Filed 9–26–02; 8:45 am]

BILLING CODE 8010–01–U

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46520; File No. SR–PCX–2002–26]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to Proposed Rule Change Relating to Maintenance of Books and Records

September 20, 2002.

On April 22, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to codify the existing obligations of PCX members to keep and preserve books and records, and to maintain daily position statements and error account information. PCX submitted Amendment No. 1 to the proposed rule change on June 11, 2002.[3] The proposed rule change was published for comment in the **Federal Register** on July 9, 2002.[4] The Commission received no comments on the amended proposal. On September 11, 2002, PCX submitted Amendment No. 2 to the proposed rule change.[5] This order approves the proposed rule change, as amended. In addition, the Commission is publishing this notice to solicit comments on Amendment No. 2 from interested

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 10, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange: (1) stated that the proposed rule change was being filed pursuant to Section 19(b)(2) of the Act and requested accelerated effectiveness; (2) revised typographical errors in the proposed rule text; (3) added the parenthetical (including any interpretation relating thereto) to proposed PCX Rule 4.20(a); and (4) clarified that the phrase ''contra organization'' in proposed PCX Rule 4.20(b) is an industry term of art that also means counter party.

[4] *See* Securities Exchange Act Release No. 46128 (June 26, 2002), 67 FR 45577.

[5] *See* letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 10, 2002 (''Amendment No. 2''). In Amendment No. 2, PCX revised the second sentence of proposed Rule 4.20(b) to read: ''Each Member or Member Organization must promptly report any differences to the contra organization and make every effort to promptly resolve the differences.''

persons, and approving Amendment No. 2 on an accelerated basis.

The proposed rule change would require all Members and Member Organizations to make, keep current, and preserve such books and records as the Exchange may prescribe and as those that may be prescribed by the Act and the rules and regulations thereunder (including any interpretation relating thereto). The proposed rule further provides that no Member or Member Organization may refuse to make available to the Exchange such books, records or other information as may be called for under the PCX rules or as may be requested in connection with an Exchange investigation.

With respect to maintaining daily position statements, the proposed rule generally provides that each Member and Member Organization must receive daily position statements with respect to securities held by the Options Clearing Corporation or any member thereof, the Depository Trust and Clearing Corporation or any similar clearing organization and must reconcile securities and money balances at least once per month by comparing those position statements against the Member or Member Organization's books and records. As proposed, each Member and Member Organization would be required to maintain reports that evidence reconciliation for at least six years, the first two years in an easily accessible place.

Finally, regarding error accounts, the proposed rule provides that each Member or Member Organization, which conducts business as a floor broker must make available to the Exchange, upon request, accurate and complete records of all trades cleared in such Member or Member Organization's error account. The proposed rule would also require that the error account records include certain audit trail data elements including, for example, name of the security, quantity, and the nature and amount of the error.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6 of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act[8] because the proposed rule change requires the Exchange's members to maintain books and records in a manner that is consistent with federal securities laws. The Commission believes such consistency should foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Commission also believes that the requirements relating to the maintenance and reconciliation of daily position statements and error accounts should have similar beneficial results.

The Commission finds good cause for approving proposed Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 2, the Exchange clarified that members must make every effort to resolve differences that may occur on position statements. The Commission believes that Amendment No. 2 should strengthen PCX's rule by requiring members to resolve inaccuracies. Therefore, the Commission believes that good cause exists pursuant to Sections 6(b)(5)[9] and 19(b)[10] of the Act to accelerate approval of Amendment No. 2 to the proposed rule change.

Interested persons are invited to submit written date, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–26 and should be submitted by October 18, 2002.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–PCX–2002–26), as amended by Amendment No. 1, is approved, and Amendment No. 2 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–24608 Filed 9–26–02; 8:45 am]

BILLING CODE 8010–01–P

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78s(b).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46517; File No. SR–PCX–2002–50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Automatic Execution of Broker-Dealer Orders in Designated Option Issues

September 20, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCX. PCX filed Amendment No. 1 to the proposed rule change on August 26, 2002.[3] The Exchange filed the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange added a clarifying phrase to its proposed rule text in order to define the ''top 120'' most actively traded option issues. *See* letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 23, 2002 (''Amendment No. 1'').

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to amend its rules to permit certain broker-dealer orders to be eligible for automatic execution on the Exchange's Automatic Execution System (''Auto-Ex''). Specifically, the proposed rule change would cover broker-dealer orders for the lesser of five contracts or the Exchange's disseminated size in option issues that are ranked in the 120 most actively traded options. The text of the proposed rule change is below. Proposed new language is *italicized*; deletions are in brackets.

* * * * *

Automatic Execution System

Rule 6.87(a)—No change.

(b) Eligible Orders

(1)—No change

(2) Notwithstanding subsection (1), above, broker-dealer orders for the lesser of five contracts or the Exchange's disseminated size are eligible for automatic execution on the Exchange's Auto-Ex System in option issues that are ranked in the 120 most actively traded equity options based on the total number of contracts traded nationally as reported by the Options Clearing Corporation. For each current month, the Exchange's determination of whether an equity option ranks in the top 120 most active issues will be based on volume statistics for the one month of trading activity that occurred two months prior to the current month.

(3) [(2)] If [the OFTC permits] broker-dealer orders *are eligible* to be automatically executed in an issue pursuant to this Rule, then *the OFTC* [it] may also permit the following with respect to such orders:

(A)–(C)—No change.

(4)–(7) [(3)–(6)]—No change.

(c)–(e)—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 6, 2001, the Commission approved an Exchange proposal to permit broker-dealer orders to be automatically executed on Auto-Ex.[6] Pursuant to that rule change, broker-dealer orders are eligible for automatic execution in particular option issues, subject to the approval of the Options Floor Trading Committee (''OFTC'').[7] Order size eligibility and other execution parameters for broker-dealer orders are also subject to OFTC approval.[8]

The Exchange is now proposing to adopt a new rule that would make broker-dealer orders eligible for automatic execution if: (a) They are for five contracts or the Exchange's disseminated size (whichever amount is less);[9] and (b) they are designated to purchase or sell options that are ranked in the 120 most actively traded equity options based on the total number of contracts traded nationally for a specified month based on volume as reported by the Options Clearing Corporation (''OCC'').

While the size parameter in the proposed rule would establish a maximum number of contracts that are eligible for automatic execution on Auto-Ex pursuant to this rule change, the size parameter could be increased to a number greater than five (but no greater than 250) pursuant to current PCX Rule 6.87(b)(5), which grants the OFTC the authority to establish the order size parameter for Auto-Ex on an issue-by-issue basis.[10]

The Exchange's determination of whether an equity option ranks in the top 120 most active, nationally-traded issues will be based on volume statistics reported by the OCC.[11] The list of designated issues for each current month will be based on volume statistics for the one month of trading activity that occurred two months prior to the current month. For example, February's list of top 120 issues will be based on December's volume, March's list of top 120 issues will be based on January's volume, and so forth. Thereafter, the Exchange will continue to designate the top 120 issues based on a two-month lag time. The Exchange intends to notify its members of the issues that are designated to be in the top 120 via a regulatory bulletin that will be published at the beginning of each month.

The Exchange believes that implementation of the proposal will enhance its ability to compete with other options exchanges for order flow.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act[12] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PCX has designated the foregoing as a proposed rule change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter date as the

[6] *See* Securities Exchange Act Release No. 45032 (November 6, 2001), 66 FR 57145 (November 14, 2001).

[7] *Id.*

[8] *Id.*

[9] For example, when an incoming broker-dealer order is for five contracts and the Exchange's disseminated size is three contracts, the entire broker-dealer order will be kicked out into the trading crowd for manual handling and will not be executed on Auto-Ex. On the other hand, when an incoming broker-dealer order is for three contracts and the Exchange's disseminated size is five contracts, the entire broker-dealer order will be executed on Auto-Ex. Telephone conversation among Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX; Michael Pierson, Vice President, Regulatory Policy, PCX; Gordon Fuller, Counsel to Assistant Director, Division, Commission; and Jennifer Lewis, Attorney, Division, Commission; on September 12, 2002.

[10] *See also* current PCX Rule 6.87(b)(2)(A), which permits the OFTC to set an Auto-Ex size parameter for broker-dealer orders that is less than the size parameter for non-broker-dealer customer orders in the same issue.

[11] The Exchange notes that it intends to use the same procedure for designating the top 120 most actively traded issues that it currently uses in designating such issues for purposes of its ''shortfall fee.'' *See* Securities Exchange Act Release No. 45351 (January 29, 2002), 67 FR 5631 (February 6, 2002).

[12] 15 U.S.C. 78f(b)(5).

Commission may designate, if consistent with the protection of investors and the public interest. Rule 19b–4(f)(6)(iii) under the Act [13] requires that the self-regulatory organization give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing date. The PCX has complied with this requirement [14]. Therefore, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) [16] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [17] does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. The PCX has requested, in order to permit the Exchange to maintain competition and efficiency, that the Commission accelerate the operative date of the proposed rule change so that it may take effect immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[18] Accordingly, the proposed rule change became effective on August 26, 2002, the date on which Amendment No. 1 was filed with the Commission.

At any time within 60 days of August 26, 2002, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–50 and should be submitted by October 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–24609 Filed 9–26–02; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See* letter from Michael D. Pierson, Vice President, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, dated July 17, 2002.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] *Id.*

[18] For purposes of accelerating the operative date of the proposed rule change only, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9R57]

State of Louisiana; Disaster Loan Areas

Cameron, Jefferson, Lafourche and Terrebonne Parishes and the contiguous Parishes of Assumption, Calcasieu, Jefferson Davis, Orleans, Plaquemines, St. Charles, St. James, St. John the Baptist, St. Mary and Vermillion in the State of Louisiana; and Jefferson and Orange Counties in the State of Texas constitute an economic injury disaster loan area as a result of an extensive cold front reaching far into the coastal areas of Southern Louisiana on May 13 through May 23, 2002. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on June 20, 2003 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.5 percent.

The number assigned for economic injury for this disaster is 9R5700 for the State of Louisiana and 9R5800 for the State of Texas.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: September 20, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–24557 Filed 9–26–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3443]

State of Wyoming; Disaster Loan Areas

Johnson County and the contiguous counties of Big Horn, Campbell, Converse, Natrona, Sheridan and Washakie in the State of Wyoming constitute a disaster area as a result of severe storms and flooding that occurred on August 27 and August 28, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 19, 2002 and for economic injury until the close of business on June 20, 2003 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 344311 and for economic damage is 9R5900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 20, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–24556 Filed 9–26–02; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee; Public Comments on Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act, Title I of the Trade and Development Act of 2000

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and Request for Comments.

SUMMARY: The African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee (the ''Subcommittee'') is requesting written public comments for the annual review of the eligibility of sub-Saharan African countries to receive the benefits of the African Growth and Opportunity Act (AGOA). This notice identifies the eligibility criteria that must be considered under AGOA, lists the sub-Saharan African countries that are currently eligible for AGOA, and the sub-Saharan African countries that are currently ineligible for the AGOA. The Subcommittee will consider any such comments in developing recommendations on country eligibility for the President. Comments received related to the child labor criteria may also be considered by the Secretary of Labor for the preparation of the Department of Labor's report on child labor as required under section 412(c) of the Trade and Development Act of 2000.

DATES: Public comments are due at USTR by noon, Monday, October 21, 2002.

ADDRESSES: Submission by electronic mail: *FR0036@ustr.gov.* Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. *See* requirements for submissions below.

FOR FURTHER INFORMATION CONTACT: For procedural questions, please contact Gloria Blue, Office of the United States Trade Representative, 600 17th Street, NW., Room F516, Washington, DC 20508, (202) 395–3475. All other questions should be directed to Constance Hamilton, Senior Director for African Affairs, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA amends Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*) (the ''Trade Act'') to authorize the President to designate sub-Saharan African countries as eligible for duty-free tariff treatment for certain products under the Generalized System of Preferences program (GSP). The AGOA also authorizes the President to designate sub-Saharan African countries as eligible for the preferential treatment the AGOA provides for certain textile and apparel articles. A beneficiary sub-Saharan African country may take advantage of the preferential treatment for certain textile and apparel articles only if it meets certain statutory requirements intended to prevent unlawful transshipment of such articles.

The President may designate a country as a beneficiary sub-Saharan African country for both the additional GSP benefits and the textile and apparel benefits of the AGOA if he determines that the country meets the eligibility criteria set forth in: (1) Section 104 of the AGOA; and (2) section 502 of the Trade Act. To date, 36 countries have been designated as beneficiary sub-Saharan African countries. These countries, as well as the 12 currently ineligible countries are listed below. Section 506A of the Trade Act provides that the President shall monitor, review, and report to Congress annually on the progress of each sub-Saharan African country in meeting the foregoing eligibility criteria in order to determine the current or potential eligibility of each country to be designated as a beneficiary sub-Saharan African country. The President's determinations will be included in the annual report submitted to Congress as required by Section 106 of the AGOA. Section 506A of the Trade Act and section 104 of the AGOA require that, if the President determines that an eligible sub-Saharan African country is not making continual progress in meeting the eligibility requirements, he must terminate the designation of the country as a beneficiary sub-Saharan African country.

The Subcommittee is seeking public comments in connection with the annual review of the eligibility of sub-Saharan African countries for the AGOA's benefits. The Subcommittee will consider any such comments in developing recommendations on country eligibility for the President. Comments related to the child labor criteria may also be considered by the Secretary of Labor in making the findings required under section 504 of the Trade Act.

Beneficiary Sub-Saharan African Countries

The following have been designated as beneficiary sub-Saharan African countries:

Republic of Benin
Republic of Botswana
Republic of Cameroon
Republic of Cape Verde
Central African Republic
Republic of Chad
Republic of the Congo
Republic of Cŏte d'Ivoire
Republic of Djibouti
State of Eritrea
Ethiopia
Gabonese Republic
Republic of Ghana
Republic of Guinea
Republic of Guinea-Bissau
Republic of Kenya
Kingdom of Lesotho
Republic of Madagascar
Republic of Malawi
Republic of Mali
Islamic Republic of Mauritania
Republic of Mauritius
Republic of Mozambique
Republic of Namibia
Republic of Niger
Federal Republic of Nigeria
Republic of Rwanda
Democratic Republic of São Tomè and Principe
Republic of Senegal
Republic of Seychelles
Republic of Sierra Leone
Republic of South Africa
Kingdom of Swaziland
United Republic of Tanzania
Republic of Uganda
Republic of Zambia

Sub-Saharan African Countries Not Designated as Beneficiary Countries

The following have not been designated as beneficiary sub-Saharan African countries:

Republic of Angola
Burkina Faso
Republic of Burundi
Democratic Republic of Congo
Federal Islamic Republic of the Comoros
Republic of Equatorial Guinea
Republic of The Gambia
Republic of Liberia
Somalia
Republic of Togo
Republic of Sudan
Republic of Zimbabwe

Requirements for Submissions

In order to facilitate the prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions to *FR0036@ustr.gov* in response to this notice. In the event

that an e-mail submission is impossible, submissions should be made by facsimile. Persons making submissions by e-mail should use the following subject line: ''2002 AGOA Annual Country Review'' Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC–'', and the file name of the public version should begin with the characters ''P–''. The ''P–'' or ''BC–'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 02–24623 Filed 9–26–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–01–C–00–PIR To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pierre Regional Airport, Pierre, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Pierre Regional Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before date, which is 30 days after publication in the **Federal Register**.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Bismarck Airports District Office, 2301 University Drive, Building 23B, Bismarck, North Dakota 58504.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mason Short, Airport Director, of the City of Pierre, South Dakota at the following address: P.O. Box 1253, Pierre, South Dakota 57501.

Air carriers and foreign car carriers may submit copies of written comments previously provided to the City of Pierre, South Dakota under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas T. Schauer, Program Manager, Bismarck Airports District Office, 2301 University Drive, Building 23B, Bismarck, North Dakota 58504, (701) 323–7380. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Pierre Regional Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 8, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Pierre, South Dakota was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 8, 2002.

The following is a brief overview of the application.

Proposed charge effective date: February 1, 2003.

Proposed charge expiration date: June 1, 2008.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $366,239.

Brief description of proposed projects: Preparation of initial PFC, Rehabilitation of Runway 7/25, Taxiway ''C'' Re-construction, General Aviation Ramp Re-Construction, Snow Removal Equipment (Front End Loader and Truck), Passenger Loading Ramp, Air Carrier Terminal Apron/Rehabilitation, Update Airport Master Plan and Airport Layout Plan, Perimeter and Airport Boundary Fence, General Aviation Apron Improvements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Pierre, South Dakota.

Issued in Des Plaines, Illinois on September 10, 2002.

Mark McClardy,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 02–24669 Filed 9–26–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 590]

Exemption for Railroad Agent Designation Under 49 U.S.C. 723

AGENCY: Surface Transportation Board.

ACTION: Notice of Proposed Exemption.

SUMMARY: The Surface Transportation Board (Board) is proposing an exemption from the statutory requirement that rail carriers designate agents in the District of Columbia on whom the Board may serve notices in proceedings. Because carriers have alternative methods of obtaining notice of Board actions, and because there is no apparent need for the Board to continue to serve agents with notice, the Board believes that designation of, and service on, agents in Board proceedings is no longer necessary.

DATES: Comments on this proposal are due October 28, 2002.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565–1661. [Federal

Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 723(a), a carrier providing transportation subject to the Board's jurisdiction is required to designate an agent in the District of Columbia. The Board ''shall'' serve notices of proceedings and actions ''immediately on the agent or in another manner provided by law.'' 49 U.S.C. 723(c). In the absence of a designated agent, the Board can effect service by posting the notice in the Board's office. Service on a designated agent shall be made in the District of Columbia at the agent's office or usual place of residence. 49 U.S.C. 723(c). And in proceedings concerning the lawfulness of a rail carrier's rates, practices, or classifications, where there is no designated agent the statute provides that ''service of notice * * * on an attorney in fact for the carrier constitutes service of notice on the carrier.'' 49 U.S.C. 723(d).[1]

Issuance of Board Decisions

The Board currently has two categories for issuing its decisions—regular release and late release. Regular release occurs at 10:30 a.m., and late release can occur later in the day, sometimes late in the afternoon. On some days, late releases occur several times during the day.

For regular release, at 10:30 a.m. the official copies of all Board decisions or notices are placed in the Board's seventh floor Docket File Reading Room (Room 755), where they can be read or photocopied for a fee.[2] Also, in instances where a rail carrier has a designated agent, a messenger is contacted at about 10:30 a.m. to pick up a copy of the decision or notice to deliver to a designated agent. The messenger normally arrives within a half hour or hour to get the decision. The railroad is billed for the cost of the messenger. If the railroad does not have a designated agent, a copy of the decision is placed on the Board's first floor bulletin board, located in Suite 100, with a notice from the Secretary.[3] A copy of the decision is also mailed at about 4:30 p.m. by first class mail to all parties of record in the proceeding. Finally, the decision is put on the Board's Internet Web site (*http://www.stb.dot.gov*), usually between 10:30 a.m. and 11:30 a.m.[4] This placement is done automatically by the Board's computer ''agent,'' which, starting at 10:30 a.m. and until the close of business each day, examines the file server about every half hour to select (or ''launch'') issued decisions to be placed on the Board's Internet Web site. Board personnel check to ensure that decisions are timely placed on the Web site.

For late releases, as in regular releases, the official copy of the Board decision or notice is placed in the Board's Docket File Reading Room. Depending on how late in the day the late release occurs, the decision may not be mailed out until the next day, and a messenger may not be asked to pick up the decision on that day but instead may be called at 10:30 a.m. the next day when regular release occurs. Copies of all late releases are also placed on the Board's first floor bulletin board, whether or not the carrier has a designated agent.[5] As already noted, the Board's computer ''agent'' automatically begins at 10:30 a.m. each day to scan the file server on a half hourly basis to launch decisions onto the web. But in some cases, a late release may not be launched onto the Board's Web site until 10:30 a.m. the next day.[6]

Discussion and Conclusions

Because the Board is currently providing at least four methods of providing notice, including, with computer technology, a method usually faster than messenger delivery to agents, we believe that it is no longer necessary for the Board to serve copies of decisions or notices affecting a particular railroad on that railroad's designated agent. We therefore believe that an exemption is warranted from the requirement that a rail carrier designate an agent on whom the Board serves decisions. Such an exemption would end a duplicative method of giving notice, with resulting cost reduction and efficiency benefits to the rail carriers and the Board. We are seeking public comments on the proposed action.

We believe that such an exemption is consistent with the statutory scheme. While mandating the designation of agents, section 723 does not make service on agents the exclusive method of notice. Rather, under section 723(c), a Board action ''shall be served immediately on the agent or *in another manner provided by law*.'' As noted, where no agent is designated, ''service may be made by posting the notice in the office of the Board.'' *Id.*[7]

Accordingly, we believe that making the decision or notice available through other means is consistent with the

[1] Under 49 U.S.C. 724, a carrier is also required to designate an agent ''on whom service of process in an action before a district court may be made.'' The requirements of section 724 will not be considered in this proceeding.

[2] Independent of our practice of placing all notices and decisions in Room 755, the Board maintains a ''reading room'' in conformity with the Freedom of Information Act (FOIA), 5 U.S.C. 552, which contains final decisions in adjudications; statements of policy and interpretation not published in the **Federal Register**; administrative staff manuals; and records released pursuant to a request under FOIA that have become or are likely to become the subject of a subsequent request. *See* 49 CFR 1001.1(b). *See also Removal, Revision, and Redesignation of Miscellaneous Regulations,* STB Ex Parte No. 572 (Sub-No. 1) (STB served Aug. 31, 1999) (*Revision I*), *aff'd, Removal, Revision, and Redesignation of Miscellaneous Regulations,* STB Ex Parte No. 572 (Sub-No. 1) (STB served June 22, 2000) (*Revision II*).

[3] This notice states in relevant part: Service of the attached document is hereby made on the following named-carrier(s) with no designated agent in the Washington, DC area by posting same at the Offices of the Surface Transportation Board.

[4] The Board maintains an Electronic Reading Room at this Web site, pursuant to the Electronic Freedom of Information Act of 1996, Pub. L. No. 104–231, 110 Stat. 3049 (1996) (EFOIA), containing documents found in the reading room, including final decisions issued on or after November 1, 1996. *See* 49 CFR 1001.1(d). The Board, however, goes beyond the requirements of FOIA and EFOIA and makes available in both the traditional and electronic reading rooms not only all decisions and notices in adjudications but also rulemakings, which are not required to be made available in this way. *See Revision II* at 2 n.6.

[5] We note that when the offices of the Board and the Interstate Commerce Commission (ICC) were located at 12th Street and Constitution Avenue, NW, Washington, DC, all decisions, whether regular or late releases, were placed on the bulletin board outside the second floor offices of the Office of the Secretary. After moving to 1925 K Street, NW, Washington, DC, the Board, for convenience to the public, in addition to placing all decisions in the seventh floor Docket File Reading Room, has placed all late releases as well as decisions where there was no designated agent on the Board's bulletin board.

[6] The Board also issues an index of its decisions called the ''Surface Transportation Board Daily Releases'' (Daily Release), which is placed both in the seventh floor Docket File Reading Room and on the Board's first floor bulletin board. Each Daily Release index sheet lists all of the decisional documents issued by the Board as of 10:30 a.m. on that day. Late-released documents are listed in the Daily Release for the next business day. In *Removal, Revision, and Redesignation of Miscellaneous Regulations,* STB Ex Parte No. 572 (Sub-No. 1) (STB served Aug. 31, 1999) at 3–4 (footnote omitted), we noted that besides listing the documents issued that day: [t]hese documents are categorized by the decisional body that issues them (such as the entire Board, Director of the Office of Proceedings, Chief of the Section of Environmental Analysis, Secretary). Within each of these categories, the documents are further indexed in alpha-numeric order, by an alphabetical docket prefix (such as AB for abandonment-related matters, and FD for finance-related matters) and docket number. The title of the case, the date the matter was decided, and the document type (decision, notice, or environmental review, for example) are also provided. Finally, a brief summary of the content of the document is given.

[7] Service on the designated agent appears to be an option and not a requirement. As indicated, section 723(c) states that a Board action ''shall be served on the agent or in another manner provided by law,'' and section 723(a) indicates that a carrier is required to designate an agent ''on whom service * * * *may* be made.'' (Emphasis supplied.) While service is required, serving an agent appears to be only one of the permissible ways of effecting service.

provisions of section 723(c) that service may be made ''in another manner provided by law.'' Rail carriers can also readily obtain decisions on our Internet Web site, in many cases before the designated agent would receive them.[8] As noted, because all Board decisions and notices, not just adjudications, are available in the Docket File Reading Room and on our Web site, the Board goes beyond the requirements of FOIA and EFOIA. Thus, with the statute allowing alternatives to service on designated agents, and with the Board providing alternatives, we do not see a need for designating an agent for the purposes of section 723. Carriers will still be required to designate agents under section 724 for service of process in an action before a district court.

Even apart from these statutory considerations, an exemption would be justified from the perspective of promoting good government. Rail carriers with designated agents receive notice of decisions in proceedings in which they are involved in four ways: through their agent, on the Board's Web site, by reading and copying the official copy of the decision in the Board's Docket File Reading Room, and by first class mail.[9] We believe that retaining the requirement of designated service agents in addition to all of these other methods of notice is unnecessary and duplicative, for both railroads and the Board, particularly given that service on designated agents no longer appears to be the fastest or most convenient method of notice.

In this regard, the ICC exempted individual rail carriers from the requirements of former 49 U.S.C. 10329 (the predecessor of section 723), noting the cost and the ''needlessly cumbersome procedure'' involved in using a designated agent. *See Altra Railroad Company—Exemption from 49 U.S.C. 10329(a)(1), 10746, and 11301*, Finance Docket No. 30524 (ICC served Aug. 17, 1984) at 1. *See also Alabama Industrial Railroad, Inc.—Exemption from 49 U.S.C. 10329(a)(1), 10746, and 11301*, Finance Docket No. 30523 (ICC served Oct. 1, 1984); *Cheney Railroad Company, Inc.—Exemption from 10329(a)(1), 10746, and 11301*, Finance Docket No. 30525 (ICC served Oct. 1, 1984). The ICC indicated in those proceedings (issued before the availability of the Board's Web site) that service by first class mail upon an attorney was more efficient than serving an agent who would then notify the carrier, which then would contact its attorney.

Likewise, with decisions or notices made available via the Docket File Reading Room, first class mail, and on the Web site (and, for late releases, also via the Board's first floor bulletin board), serving a designated agent appears to be unnecessary. Granting an exemption should provide cost savings to the rail carriers and make the notice process more efficient.

Under 49 U.S.C. 10502, we are directed to exempt a transaction from regulation when we find that: (1) Regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Requiring rail carriers to designate agents and the Board to serve notices on them pursuant to 49 U.S.C. 723 would not appear to be necessary to carry out the rail transportation policy. By minimizing the administrative expense in obtaining decisions and notices, an exemption would minimize the need for Federal regulatory control over the rail transportation system [49 U.S.C. 10101(2)]. By eliminating an unnecessary expense for railroads, an exemption would also foster sound economic conditions in transportation [49 U.S.C. 10101(5)], and encourage efficient management of railroads [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy would not be adversely affected.

Continued designation of, and service upon, agents under section 723 is not needed to protect shippers from the abuse of market power. This process has no direct effect on shippers, and to the extent an exemption reduces administrative costs of providing rail service, it should benefit shippers. Given our finding regarding the lack of effect of the exemption on market power, we need not determine whether the proposed exemption is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Labor protection, however, is not implicated under section 723.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: September 19, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–24334 Filed 9–26–02; 8:45 am]

BILLING CODE 4915–00–P

[8] Section 723(c) provides that, when service is made on a designated agent, it shall be done ''immediately.'' In many cases, the decision or notice is available on our Web site before the agent receives it.

[9] For late releases, there is a fifth method of obtaining notice: reading items posted on the Board's first floor bulletin board.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34178]

Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc.—Control—Iowa, Chicago & Eastern Railroad Corporation

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 2 in STB Finance Docket No. 34178; Notice of Acceptance of Primary Application and Related Filings; Issuance of Procedural Schedule.[1]

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the DME–2 primary application and the undesignated related filings filed August 29, 2002, by Dakota, Minnesota & Eastern Railroad Corporation (DM&E), Cedar American Rail Holdings, Inc. (Holdings), and Iowa, Chicago & Eastern Railroad Corporation (IC&E).[2] The primary application seeks Board approval and authorization under 49 U.S.C. 11321–26 for DM&E's acquisition of indirect control of IC&E through ownership of IC&E's stock by Holdings, which is itself a wholly owned subsidiary of DM&E. The related filings seek related trackage rights relief contingent upon approval of the primary application. The Board finds that the transaction proposed in

[1] This decision covers: a railroad control application, which was filed in STB Finance Docket No. 34178, *Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc.—Control—Iowa, Chicago & Eastern Railroad Corporation;* a terminal trackage rights application, which was filed in STB Finance Docket No. 34178 (Sub-No. 1), *Dakota, Minnesota & Eastern Railroad Corporation—Terminal Trackage Rights—Union Pacific Railroad Company;* and a trackage rights exemption notice, which was filed in STB Finance Docket No. 34178 (Sub-No. 2), *Dakota, Minnesota & Eastern Railroad Corporation—Trackage Rights Exemption—Iowa, Chicago & Eastern Railroad Corporation and Iowa Northern Railway Company.* The railroad control application filed in STB Finance Docket No. 34178 is referred to as the ''primary application.'' The terminal trackage rights application filed in STB Finance Docket No. 34178 (Sub-No. 1) and the trackage rights exemption notice filed in STB Finance Docket No. 34178 (Sub-No. 2) are referred to collectively as the ''related filings.''

[2] DM&E, Holdings, and IC&E are referred to collectively as applicants.

the primary application is a ''minor transaction'' under 49 CFR 1180.2(c).

The Board has considered applicants'' DME–3 petition for establishment of a procedural schedule, also filed August 29, 2002. With a modification to provide additional time for public comments, the Board is adopting the procedural schedule applicants have proposed (which, as modified, will allow the Board to issue a decision 29 days prior to the statutory deadline, assuming that no environmental review is required and further assuming that no oral argument is held). The Board's schedule provides for issuance of a decision on the 45th day after the close of the record.

DATES: The effective date of this decision is September 27, 2002. Any person who wishes to participate in this proceeding as a party of record must file, no later than October 15, 2002, a notice of intent to participate. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by November 14, 2002. Responses to comments, protests, requests for conditions, and other opposition, responses to comments of DOJ and DOT, and rebuttal in support of the primary application and/or either or both of the related filings must be filed by December 13, 2002. For further information respecting dates, *see* Appendix A (Procedural Schedule).

ADDRESSES: Send an original and 25 copies of all pleadings referring to STB Finance Docket No. 34178 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.[3] In addition, one copy of all documents in this proceeding must be sent to: (1) Secretary of the United States Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3645, Department of Justice, Washington, DC 20530; (3) William C. Sippel, Esq., Fletcher & Sippel LLC, Two Prudential Plaza, Suite 3125, 180 North Stetson Avenue, Chicago, IL 60601–6721; and (4) David L. Knudson, Esq., Davenport, Evans, Hurwitz & Smith, L.L.P., 206 West 14th Street, Sioux Falls, SD 57104.

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties also must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Textual materials must be in, or compatible with, WordPerfect 9.0. Electronic spreadsheets must be in, or compatible with, Lotus 1–2–3 Release 9 or Microsoft Excel 2002. A copy of each disk or CD submitted to the Board should be provided to any other party upon request. Further details are discussed below.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1655. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The DM&E/IC&E common control for which applicants seek approval in the primary application involves the acquisition by DM&E of indirect control of IC&E through ownership of IC&E's stock by DM&E's Holdings subsidiary.

Dakota, Minnesota & Eastern Railroad Corporation

DM&E, a Class II railroad, owns or operates approximately 1,103 route miles of rail lines (including approximately 720 route miles of main lines and approximately 383 route miles of branch lines) in Wyoming, South Dakota, Nebraska, Minnesota, and Iowa. DM&E's principal route extends from Colony (Bentonite), WY, through Rapid City, SD, to Winona, MN. Branch lines extend from Rapid City to Crawford, NE, and Chadron, NE; from Blunt, SD, to Onida, SD; from Wolsey, SD, to Aberdeen, SD, via trackage rights on The Burlington Northern and Santa Fe Railway Company (BNSF); from Redfield, SD, to Mansfield, SD; from Waseca, MN, to Hartland, MN; and from Hartland, MN, to Mason City, IA, via trackage rights on Union Pacific Railroad Company (UP).[4] DM&E also has a currently inactive branch line extending from Huron, SD, to Yale, SD, and currently inactive trackage rights on BNSF extending from Yale, SD, to Watertown, SD. DM&E also operates via trackage rights over Soo Line Railroad Company, d/b/a Canadian Pacific Railway (CP), between Minnesota City, MN, and Winona, MN, and via trackage rights over short, isolated segments of UP-owned trackage in Mankato, Owatonna, and Winona, MN.

DM&E's principal yard and terminal facilities are located at Waseca and Tracy, MN, and Huron, Pierre, and Rapid City, SD. DM&E interchanges traffic with UP at Winona and Mankato, MN, and at Mason City, IA; with CP at Minnesota City, MN; with BNSF at Wolsey, Aberdeen, and Redfield, SD, and Crawford, NE; and with Nebkota Railway, Inc., at Chadron, NE. DM&E can also conduct, via its overhead trackage rights on UP's Hartland-Mason City line, restricted interchanges with CEDR at Glenville, MN, and with IANR at Manly, IA. Although the lines of DM&E and IC&E cross at grade and connect in Owatonna, MN, DM&E and IC&E cannot (for the most part) interchange at that location due to restrictions on DM&E's trackage rights on the UP-owned ''island'' trackage through Owatonna.[5]

Iowa, Chicago & Eastern Railroad Corporation

IC&E, a Class II railroad, owns or operates approximately 1,397 route miles of rail lines (including approximately 786 route miles of main lines and approximately 611 route miles of secondary or branch lines) in Minnesota, Iowa, Kansas, Missouri, Wisconsin, and Illinois. All of these lines were recently acquired by IC&E from I&M Rail Link, LLC (I&M), in an asset acquisition transaction (the IC&E/I&M asset acquisition transaction).[6] IC&E began rail operations on July 30, 2002, upon consummation of the IC&E/I&M asset acquisition transaction. IC&E's principal routes extend from Chicago, IL, to Sabula Junction, IA, and from there both southwest to Kansas City, MO, and northwest to Minneapolis/St. Paul, MN. Significant secondary routes—known as the Corn Lines—extend across Southern Minnesota from Ramsey, MN, to Jackson, MN, and across Northern Iowa from Marquette, IA, to Sheldon, IA. Branch lines extend from Davis

[3] In order for a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing. In addition, each formal filing must be accompanied by an electronic submission per our requirements as discussed in detail in this decision.

[4] DM&E's Hartland-Mason City trackage rights are restricted: to interchanging traffic with UP at Mason City; and to interchanging limited categories of traffic with Cedar River Railroad Company (CEDR) at Glenville, MN, and with Iowa Northern Railway Company (IANR) at Manly, IA.

[5] DM&E's overhead trackage rights on UP's Hartland-Mason City line do not allow DM&E to interchange with IC&E at Albert Lea, MN, or Mason City, IA, two points at which IC&E lines connect with UP's Hartland-Mason City Line.

[6] *See Iowa, Chicago & Eastern Railroad Corporation—Acquisition and Operation Exemption—Lines of I&M Rail Link, LLC,* STB Finance Docket No. 34177 (STB served June 12, 2002, June 26, 2002, and July 22, 2002) (*IC&E Acquisition*).

Junction, IL, through Rockford, IL, and Beloit, WI, to Janesville, WI; from Mason City, IA, to Comus, MN; from Wells, MN, to Minnesota Lake, MN; from Davenport, IA, to Albany, IL, via trackage rights on BNSF; and from Davenport, IA, to Eldridge, IA. IC&E has overhead trackage rights over other railroads at a number of locations, including over CP between River Junction, MN, and Merriam Park, MN, and between Comus, MN, and Rosemount, MN; over IANR between Nora Springs, IA, and Plymouth Junction, IA (connecting two IC&E line segments); and over the Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois, d/b/a Metra, between Pingree Grove, IL, and Cragin Junction in Chicago, IL.[7]

IC&E's principal yard and terminal facilities are located at Davenport, IA, Ottumwa, IA, Muscatine, IA, Marquette, IA, Mason City, IA, West Davenport, IA, Savanna, IL, and Davis Junction, IL. IC&E owns a non-controlling stock interest in the Kansas City Terminal Railway Company (KCT), a switching and terminal carrier in Kansas City, KS/MO. IC&E is also a joint owner with The Kansas City Southern Railway Company (KCS) of the ''Joint Agency'' yard facility in Kansas City, MO. IC&E interchanges traffic: with The Belt Railway Company of Chicago (BRC) at Cragin Junction/Clearing, IL; with BNSF at East Moline, IL, Moline, IL, Bettendorf, IA, Ottumwa, IA, Minneapolis/St. Paul, MN, and Kansas City, MO; with CEDR at Charles City, IA, and Lyle, MN; with Chicago, Central & Pacific Railroad Company at Dubuque, IA, and Rockford, IL; with the Chillicothe-Brunswick Rail Authority at Chillicothe, MO; with the Elgin, Joliet & Eastern Railway Company at Spaulding, IL; with Illinois RailNet, Inc., at Davis Junction, IL; with the Indiana Harbor Belt Railroad Company (IHB) at Franklin Park, IL; with Iowa Interstate Railroad Ltd. at Rock Island, IL, and Davenport, IA; with IANR at Nora Springs, IA, and Plymouth Junction, IA; with the Iowa Traction Railroad Company at Mason City, IA; with KCS at Kansas City, MO; with the Minnesota Commercial Railway Company at Minneapolis/St. Paul, MN; with Norfolk Southern Railway Company at Birmingham, MO, and Kansas City, MO; with CP at Bensenville, IL, Minneapolis/St. Paul, MN, Northfield, MN, and River Junction, MN; with UP at Clinton, IA, Emmetsburg, IA, Mason City, IA, Sheldon, IA, Minneapolis/St. Paul, MN, Kansas City, MO, and Janesville, WI; and with Wisconsin & Southern Railway Company at Janesville, WI. IC&E also interchanges with all major line-haul carriers at Chicago, through intermediate switching services provided by BRC, IHB, and CP.[8]

Cedar American Rail Holdings

Holdings, a wholly owned noncarrier subsidiary of DM&E, is the beneficial owner of all of the outstanding common stock of IC&E. Applicants indicate, however, that, immediately prior to the consummation of the IC&E/I&M asset acquisition transaction, Holdings placed the stock of IC&E into an independent voting trust, where it will remain pending action by the Board on the primary application. Applicants further indicate that, although it is anticipated that, if the primary application is approved, Holdings would function as if it were a holding company for DM&E and IC&E (*i.e.*, Holdings would oversee the management and coordination of operations on the DM&E/IC&E system and would perform marketing and administrative services for both DM&E and IC&E, as if each of DM&E and IC&E were a wholly owned subsidiary of Holdings), DM&E's capital structure did not easily allow for the creation of a holding company in the normal corporate chain position above DM&E. Holdings, applicants therefore assert, was created as a subsidiary of DM&E (*i.e.*, positioned in the corporate chain between DM&E and IC&E).

The DM&E/IC&E Common Control Transaction: The Mechanics; Timing

The DM&E/IC&E common control transaction proposed in the primary application contemplates the acquisition, by DM&E, of indirect control of IC&E through the termination of the voting trust in which the IC&E stock is currently held and the distribution of that stock to Holdings, DM&E's wholly owned subsidiary. Applicants indicate that, if and when control is consummated, Holdings would function as if it were the holding company for both DM&E and IC&E and would oversee the distinct but coordinated operations of DM&E and IC&E, which would remain separate entities and which would conduct their own operations with their own employees and would be responsible for their own transportation, mechanical, and engineering functions. Applicants further indicate that DM&E would consummate control of IC&E (through termination of the IC&E voting trust, which would allow Holdings to exercise control over the IC&E stock) as soon as a Board decision approving the primary application and authorizing the DM&E/IC&E common control transaction has become effective.

Public Interest Considerations: In General

Applicants contend that the proposed DM&E/IC&E common control would strengthen the combined DM&E/IC&E system and improve both its operating and financial performance. Common control, applicants argue, would allow both railroads to serve their customers more effectively and to compete more effectively with Class I railroads, motor carriers, and barge transportation in the mid-American transportation market. Customers on both carriers, applicants maintain, would benefit from the better equipment coordination and utilization, improved service patterns, and other operating efficiencies made possible by common control. The larger and more diversified traffic base and greater financial resources of the combined DM&E/IC&E system, applicants argue, would provide a more stable and reliable environment for shippers on both railroads. Grain shippers on both DM&E and IC&E, applicants contend, would benefit from having access to a combined, coordinated system fleet of over 6,100 covered hopper cars. And, applicants maintain, common control would provide shippers and receivers on DM&E and IC&E with new, independent routing and service options and more efficient and competitive single-system access to significant new markets and gateways.

Applicants maintain, with respect to DM&E, that common control would allow DM&E to gain independent access to major markets and gateways. Shippers on DM&E's lines, applicants claim, would benefit from new single-system rail access to the longer river shipping season at Mississippi River ports south of Winona, MN, and grain shippers would enjoy, for the first time, independent, single-system access to the major rail gateways of Chicago and Kansas City, new single-system routes to major grain processing plants on IC&E, new independent joint-line routes to processors elsewhere in Iowa (such as on IANR in Cedar Rapids), and neutral interline access to significant long-haul destination markets in the south-central United States. And common control, applicants maintain, would guarantee that DM&E would have neutral eastern

[7] Applicants indicate that IC&E will shortly commence operations into Chicago via the Pingree Grove-Cragin Junction line pursuant to a temporary detour agreement with Metra. Applicants add that, in the interim, IC&E traffic to/from the Chicago terminal has been handled via haulage arrangements with other railroads.

[8] IC&E's overhead traffic rights on CP's River Junction-Twin Cities line do not allow IC&E to interchange with DM&E at Minnesota City, MN, or Winona, MN, two points at which DM&E lines connect with CP's line.

routings for coal movements from the Powder River Basin (PRB) in Wyoming, if and when DM&E constructs its recently-approved line into the PRB.[9]

Applicants maintain, with respect to IC&E, that, after many years of doubt regarding the viability of the rail lines now owned by IC&E, common control of DM&E and IC&E would solidify the return of those lines as a stable, reliable, and essential component of the regional rail network in the north-central United States. Grain shippers on IC&E's lines, applicants argue, would gain potential new routes to the Pacific Northwest for export, while grain receivers on IC&E's lines and elsewhere in Iowa would be assured continued reliable, independent, and long-term access to grain from origins both on IC&E's Corn Lines and also on DM&E's lines in southern Minnesota and South Dakota. And, applicants assert, IC&E's largest customer, a steel manufacturing firm near Davenport, IA, would have single-system service for inbound scrap that currently originates on DM&E but must now be interchanged to an intermediate carrier for interchange to IC&E.

Public Interest Considerations: Competitive Impacts

Applicants contend that the proposed DM&E/IC&E common control transaction, which they describe as completely ''end-to-end'' in nature, would have no adverse impact on competition. DM&E and IC&E, applicants state, serve no common industries today and do not currently interchange traffic at any location, and, therefore, common control would not result in any reduction in existing rail-to-rail competition at any point or in any market. No shipper, applicants maintain, would lose competitive rail service or access to any existing routing options as a result of common control. The combined DM&E/IC&E system, applicants assert, would face intense competition from the large Class I rail systems that would surround it. And common control, applicants argue, would have no adverse impact on the continuation of essential transportation services by DM&E, by IC&E, or by any other railroad, and diversions of traffic from other railroads, applicants maintain, would be minimal.[10]

Environmental Implications

Applicants contend that, under 49 CFR 1105.6(c)(2)(i), the DM&E/IC&E common control proposal is categorically excluded from environmental reporting requirements because (applicants maintain) common control would not result in changes in carrier operations that would exceed the thresholds established in 49 CFR 1105.7(e)(4) or (5). Applicants further contend: that common control would result in a minor increase (no more than several trains per week) in traffic over IC&E's rail line between Owatonna, MN, and Mason City, IA; that this, however, would be offset by a roughly corresponding decrease in train operations over DM&E's Waseca, MN-Hartland, MN, line and UP's Hartland, MN-Mason City, IA, line (which includes UP's ''Spine Line'' route between Albert Lea, MN, and Mason City, IA); and that anticipated traffic increases elsewhere on the combined DM&E/IC&E system would be handled in existing scheduled train movements.[11]

Historic Preservation Implications

Applicants contend that, under 49 CFR 1105.8(b)(1) and (3), the DM&E/IC&E common control proposal is exempt from historic preservation reporting requirements. Applicants reason: that rail operations would continue after consummation of common control; that there would not be a substantial change in the level of maintenance of railroad property; that further Board approval would be required to abandon any service; and that there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older.

Labor Protection

Applicants acknowledge that the applicable level of labor protection for the proposed DM&E/IC&E common control transaction would be that set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60, 84–90 (1979). Applicants add, however, that they do not anticipate that any existing DM&E or IC&E employees would be adversely affected by DM&E/IC&E common control.

Related Filing: Terminal Trackage Rights Application

In STB Finance Docket No. 34178 (Sub-No. 1), DM&E has filed, contingent upon approval of the DM&E/IC&E common control proposal, a ''terminal trackage rights'' application for an order under 49 U.S.C. 11102 that would permit DM&E to operate, without restriction, over approximately 3,700 feet of UP track in Owatonna, MN (extending between approximately MPs 88.6 and 87.9), in order to establish an unrestricted connection at Owatonna between DM&E and IC&E.

DM&E explains: That, when it was created in 1986 as a spinoff from the Chicago & North Western Transportation Company (C&NW), it acquired from C&NW approximately 1,000 miles of rail lines and related trackage rights in South Dakota, Minnesota, and Iowa, extending in a generally west-east direction between Rapid City, SD, and Winona, MN; that, for the most part, DM&E acquired, in 1986, ownership of the Rapid City-Winona line; that, however, DM&E did not acquire, in 1986, ownership of the 2.4-mile segment of that line that lies in Owatonna between approximately MPs 88.6 and 86.2, which included (at approximately MP 87.9) a physical at-grade connection with a north-south CP line; that, as respects this 2.4-mile segment, DM&E acquired, in 1986, trackage rights that were both exclusive (C&NW did not retain the right to operate over the segment) and restricted (DM&E was allowed to use the trackage rights for overhead traffic, and for any DM&E/CP interchange traffic that originated or terminated either on the 2.4-mile segment or at industries in Owatonna served by CP and open to reciprocal switching); that C&NW retained ownership of the 2.4-mile segment and all ancillary trackage in Owatonna; and that the 2.4-mile segment was ''carved out'' of the DM&E/C&NW asset acquisition transaction in order to preclude an unrestricted DM&E/CP interchange at Owatonna.

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[9] *See Dakota, Minnesota & Eastern Railroad Corporation Construction Into The Powder River Basin,* STB Finance Docket No. 33407 (STB served Jan. 30, 2002) (*PRB Construction*), *pet. for judicial review pending sub nom. Mid States Coalition for Progress et al.* v. *Surface Transportation Board et al.,* No. 02–1359 *et al.* (8th Cir. filed Feb. 7, 2002).

[10] Applicants anticipate that, as a result of common control, approximately 9,850 carloads of traffic would be diverted to the combined DM&E/IC&E system annually, generating annual revenues of approximately $8.1 million. Applicants indicate that, for the most part, these diversions would represent extensions of haul on existing DM&E traffic resulting from shippers favoring the single-system service offerings of the combined DM&E/IC&E.

[11] As we announced in our *IC&E Acquisition* decision served July 22, 2002 (at 16–17), we do not intend to consider the potential environmental impacts associated with the prospect of routing over former I&M lines traffic to or from the new line that we have approved for construction in *PRB Construction* unless and until DM&E is prepared to build that line. As we explained, deferring any such examination is appropriate given the current uncertainty as to whether that line will be built and, if built, what portion of the traffic to and from the new line would move over which I&M lines. Because the information we would not to assess the potential environmental impacts is not yet available, it would be premature to attempt to conduct such an assessment now. In the meantime, we have barred IC&E from handling over former I&M lines any trains moving to or from the new line until we conduct an appropriate environmental review of the cumulative impacts of the approvals that we issued in those two cases together with the approval that the applicants seek in this case.

DM&E further explains that, although C&NW's ownership interest in the 2.4-mile segment was acquired several years ago by UP, and although CP's (later I&M's) north-south line through Owatonna was recently acquired by IC&E, a restriction created in 1986 that precluded the movement, under DM&E's trackage rights, of most DM&E/CP interchange traffic continues to exist, and now bars the creation of a meaningful DM&E/IC&E interchange at Owatonna. This restriction continues to exist, DM&E adds, even though the 2.4-mile segment has not been used by C&NW (or UP) since 1986, and even though the 2.4-mile segment now exists as an ''island'' that is not connected to the rest of the UP system.[12]

DM&E contends that terminal trackage rights over an approximately 0.7-mile portion of the 2.4-mile segment (*i.e.*, over the portion of the 2.4-mile segment that lies between approximately MPs 88.6 and 87.9) would be necessary to establish a direct connection and unrestricted interchange between DM&E and IC&E, which (DM&E notes) do not presently connect with each other at any location. DM&E further contends that, without such relief, DM&E and IC&E would be unable to effectuate the competitive traffic routings that would otherwise be made possible by the DM&E/IC&E combination. A DM&E/IC&E interchange at Owatonna, DM&E argues, would be essential for applicants to achieve many of the competitive and service benefits of DM&E/IC&E common control.

DM&E asserts that a grant of the sought terminal trackage rights would also be necessary to allow DM&E to operate via trackage rights over IC&E's line between Owatonna, MN, and Mason City, IA, as contemplated by the trackage rights exemption notice filed in STB Finance Docket No. 34178 (Sub-No. 2). DM&E explains that the ability to operate over IC&E to Mason City would provide DM&E with efficient and unrestricted interchanges: with CEDR at Lyle, MN; with IANR at Plymouth Junction, IA, and Nora Springs, IA; and with IC&E at Mason City, IA.

DM&E acknowledges that, in the recent *PRB Construction* decision, the Board granted DM&E authority to construct, just east of Owatonna, a 1.7-mile ''loop'' connection between DM&E's west-east line (beginning at a point past the end of the 2.4-mile segment) and what was then I&M's (and is now IC&E's) north-south line. *See PRB Construction,* slip op. at 19, 41 (the 1.7-mile loop is ''Alternative O–4,'' which DM&E was authorized to construct if it could not reach an agreement with UP for a DM&E/I&M interchange at MP 87.9, referred to as ''Alternative O–5''). DM&E argues, however, that, as the Board itself has concluded, *see PRB Construction,* slip op. at 19, a MP 87.9 interchange would be ''environmentally preferable'' to construction of the 1.7-mile loop. And, DM&E asserts, given that the only obstacle to a MP 87.9 interchange is a 1986 restriction, construction of the 1.7-mile loop would be completely unnecessary and wasteful.

DM&E therefore asks that we allow the establishment of an unrestricted DM&E/IC&E connection at Owatonna by granting its application for terminal trackage rights between approximately MPs 88.6 and 87.9. DM&E further contends that, although 49 U.S.C. 11102(a) provides that compensation for use of terminal trackage rights ''shall be paid or adequately secured'' before a carrier may begin to use such rights, we should not require that the compensation be established before DM&E could begin use of the proposed STB Finance Docket No. 34178 (Sub-No. 1) terminal trackage rights. Such a requirement, DM&E explains, would delay the public benefits of the proposed DM&E/IC&E common control.

Related Filing: Trackage Rights Exemption Notice

In STB Finance Docket No. 34178 (Sub-No. 2), DM&E has filed, contingent upon approval of both the DM&E/IC&E common control transaction and the Sub-No. 1 terminal trackage rights application,[13] a notice of exemption pursuant to 49 CFR 1180.2(d)(7) to obtain overhead trackage rights: (1) on the IC&E line between Owatonna, MN (at approximately MP 101.9), and Mason City, IA (at approximately MP 0.0), a distance of approximately 72.4 miles;[14] and (2) on the IANR line between Plymouth Junction, IA (at approximately MP 219.5), and Nora Springs, IA (at approximately MP 210.7), a distance of approximately 8.8 miles. The Sub-No. 2 trackage rights, which are being sought with the approval of IC&E and IANR, would allow DM&E to interchange traffic: with IC&E at Austin, MN, and Mason City, IA; with UP at Mason City, IA; with CEDR at Lyle, MN; and with IANR at Plymouth Junction and Nora Springs, IA. DM&E indicates that the Sub-No. 2 trackage rights would facilitate the effective movement of trains and interchange of traffic between DM&E and IC&E, would expand routing and service options with other rail carriers, and would reduce trackage rights fees paid to UP in connection with DM&E's existing route to Mason City. DM&E acknowledges that the applicable level of labor protection for the Sub-No. 2 trackage rights would be that set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605, 610–15 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653, 664 (1980).

Primary Application and Related Filings Accepted

We agree with applicants that the DM&E/IC&E common control transaction proposed in the primary application is a ''minor transaction'' under 49 CFR 1180.2(c), and we are accepting the primary application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. *See* 49 U.S.C. 11321–26; 49 CFR part 1180. We are also accepting for consideration the two related filings, which are also in compliance with the applicable regulations.[15]

Public Inspection

The application and the related filings are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, NW., in Washington, DC. In addition, they may be obtained from applicants' representatives (Mr. Sippel, for DM&E and Holdings; Mr. Knudson, for IC&E) at the addresses indicated above.

Procedural Schedule

Applicants have indicated that they desire to consummate the DM&E/IC&E common control transaction as soon after January 1, 2003, as possible. They have therefore proposed a procedural schedule that provides for issuance of a decision by the Board by January 3, 2003, and if the application is granted,

[12] The UP (formerly C&NW) north-south ''Spine Line'' between the Twin Cities and Kansas City passes *under* the 2.4-mile segment (at approximately MP 88.5) but does not connect with that segment.

[13] DM&E indicates that, although the notice of exemption (filed August 29, 2002) respecting the exempt trackage rights transactions in STB Finance Docket No. 34178 (Sub-No. 2) would become effective prior to the effective date of a Board decision on the primary application and Sub-No. 1 terminal trackage rights application, consummation of the Sub-No. 2 trackage rights transactions is contingent on approval of both the primary application and the Sub-No. 1 terminal trackage rights application.

[14] At Ramsey, MN (an intermediate point between Owatonna and Mason City), there is a milepost equation at which MP 72.5=MP 43.0.

[15] We reserve the right to require the filing of supplemental information from applicants or any other party or individual, if necessary to complete the record in this matter.

with an effective date of January 15, 2003.

We will adopt a 151-day procedural schedule that provides some additional time to that proposed by applicants for comments by interested parties, but still provides for less total time than the 180-day procedural schedule (30 days + 105 days + 45 days) provided by the deadlines set forth at 49 U.S.C. 11325(a), (d)(2). Under the schedule we are adopting: all comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including comments of DOJ and DOT, will be due on November 14, 2002; [16] responses to comments, protests, requests for conditions, and other opposition, responses to comments of DOJ and DOT, and rebuttal in support of the primary application and/or either or both of the related filings will be due on December 13, 2002; and our decision will be issued by January 27, 2003 (the 45th day after the close of the record). If we determine that an Environmental Assessment or Environmental Impact Statement is required, we will adjust the procedural schedule as necessary. Also, if oral argument is held, our decision will be issued within 45 days after the oral argument.[17]

Notice of Intent To Participate

Any person who wishes to participate in this proceeding as a party of record (POR) must file with the Board, no later than October 15, 2002, an original and 25 copies of a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of the United States Department of Transportation, the Attorney General of the United States, and applicants' representatives. In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

We will serve, as soon as practicable, a notice containing the official service list (the service list notice). Each party of record will be required to serve upon all other parties of record, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each party of record also will be required to file with the Board, within 10 days of the service date of the service list notice, an original plus 10 copies of a certificate of service, along with an electronic copy, indicating that the service required by the preceding sentence has been accomplished. Every filing made by a party of record after the service date of the service list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record (PORs), and therefore, need not be served with copies of filings, unless any such Member or Governor has requested to be, and is designated as, a POR.

We will serve copies of our decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, Dā2 Dā Legal Copy Service, to receive copies of Board decisions, orders, and notices served in this proceeding. Dā 2 Dā Legal Copy Service will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service. The telephone number for Dā 2 Dā Legal Copy Service is (202) 293–7776.[18]

Comments, Protests, Requests for Conditions, and Other Opposition Evidence and Argument, Including Filings by DOJ and DOT

All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including filings by DOJ and DOT, must be filed by November 14, 2002.

Parties (including DOJ and DOT) filing such comments, etc., must submit an original and 25 copies thereof. Each such submission: must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; must refer to STB Finance Docket No. 34178; and must be clearly labeled with an identification acronym for that party and number for the submission by that party (*e.g.*, the primary application was labeled ''DME–2''), *see* 49 CFR 1180.4(a)(2). In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

Comments, etc., must be concurrently served by first class mail on the U.S. Attorney General and the U.S. Secretary of Transportation, applicants' representatives, and all other parties of record, and should include: the docket number and title of the proceeding and the name, address, and telephone number of the commenting party and its representative upon whom service shall be made.

Because we have determined that the DM&E/IC&E common control transaction proposed in the primary application is a minor transaction, no responsive applications will be permitted. *See* 49 CFR 1180.4(d)(1).

Protesting parties are advised that, if they seek either the denial of the primary application or the imposition of conditions upon any approval thereof, on the theory that approval without imposition of conditions will harm either their ability to provide essential services and/or competition, they must present substantial evidence in support of their positions. *See Lamoille Valley R.R. Co.* v. *ICC,* 711 F.2d 295 (D.C. Cir. 1983).

Responses to Comments, Protests, Requests for Conditions, and Other Opposition, Including DOJ and DOT; Rebuttal in Support of Primary Application

Responses to comments, protests, requests for conditions, and other opposition submissions, responses to comments of DOJ and DOT, and rebuttal

[16] DOT, in its DOT–1 pleading filed September 18, 2002, has asked that we modify the procedural schedule to accommodate its past practice of filing comments not only in response to the application itself but also in response to the comments filed by other parties. As in past proceedings, we will allow DOT to file its comments in response to other parties' comments on the reply due date (here, December 13, 2002) should DOT decide to file such a response, with the understanding that applicants, if they feel the need, will be allowed to late-file (as quickly as possible) a reply to DOT's responsive comments. In this manner, we will not extend the procedural schedule unnecessarily.

[17] If we ultimately decide to approve the DM&E/IC&E common control transaction, we will give consideration at that point to applicants' request that we shorten the usual 30-day period between the service date of an approval decision and the effective date of that decision. *See* DME–3 at 3 (applicants ask that any such approval become effective on the 12th day after the service date of our decision).

[18] An interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. Our Railroad Consolidation Procedures provide: ''Any document filed with the Board (including applications, pleadings, *etc.*) shall be promptly furnished to interested persons on request, unless subject to a protective order.'' *See* 49 CFR 1180.4(a)(3). The primary application and other filings in this proceeding will also be available on the Board's website at *''www.sbt.dot.gov''* under ''Filings.'' Furthermore, Dā 2 Dā Legal Copy Service will provide, for a charge, copies of the primary application or any other filing made in this proceeding, except to the extent any such filing is subject to the protective order previously entered in this proceeding.

in support of the primary application and/or either or both of the related filings must be filed by December 13, 2002.

Discovery

Discovery may begin immediately. We encourage the parties to resolve all discovery matters expeditiously and amicably.

Electronic Submissions: In General

As already mentioned, in addition to submitting an original and 25 paper copies of each document filed with the Board, parties must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or on compact discs (CDs), copies of all textual materials, electronic workpapers, data bases, and spreadsheets used to develop quantitative evidence.[19] Textual materials must be in, or compatible with, WordPerfect 9.0. Electronic spreadsheets must be in, or compatible with, Lotus 1–2–3 Release 9 or Microsoft Excel 2002. Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, *see* 49 CFR 1180.4(a)(2), and a copy of such disk or CD should be provided to any other party upon request. Also, each disk or CD should be clearly labeled as containing confidential or redacted materials. The data contained on the disks and CDs submitted to the Board will be subject to the protective order granted in Decision No. 1, served August 14, 2002, and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.[20]

Electronic Submissions: Workpapers, Data Bases, and Spreadsheets

In the past, we have encountered problems with the ''links'' in spreadsheets functioning properly when the spreadsheets are installed on desktop computers or network servers. To avoid such problems, parties submitting electronic workpapers, data bases, and/or spreadsheets should use naming and linking conventions that will permit the spreadsheets to operate on the Board's computers.[21] Electronic data bases should be compatible with the Microsoft Open Database Connectivity (ODBC) standard.[22] The Board currently uses Microsoft Access 2000, and data bases submitted should be either in this format or another ODBC-compatible format. Otherwise, submitters should explain why it is not possible to submit the data base in this format and seek a determination as to whether it is feasible for us to accept the data base in another format.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The primary application in STB Finance Docket No. 34178 and the related filings in STB Finance Docket No. 34178 (Sub-Nos. 1 and 2) are accepted for consideration.

2. The parties to this proceeding must comply with the Procedural Schedule adopted by the Board in this proceeding as shown in Appendix A.

3. The parties to this proceeding must comply with the procedural requirements described in this decision.

4. This decision is effective on September 27, 2002.

Decided: September 19, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

Appendix A: Procedural Schedule

August 29, 2002: Primary application, related filings, and petition for establishment of procedural schedule filed.

September 27, 2002: Board notice of acceptance of primary application and related filings published in the **Federal Register**.

October 15, 2002: Notices of intent to participate due.

November 14, 2002: All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including filings of the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), due.

December 13, 2002: Responses to comments, protests, requests for conditions, and other opposition due. Responses to comments of DOJ and DOT due. Rebuttal in support of primary application and/or either or both of the related filings due.

January 27, 2003: Date of service of final decision (if no environmental review is required and no oral argument is held).

[FR Doc. 02–24602 Filed 9–26–02; 8:45 am]

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[19] Parties unable to comply with the electronic submission requirements can seek a waiver from the Board.

[20] The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations.

[21] We will not specify a particular naming and linking convention. It is incumbent upon the submitter to use generic naming and linking conventions that will permit the spreadsheets to operate on desktop computers or from a network server. Questions concerning naming and linking matters and/or compatibility with our computers can be addressed to William H. Washburn, Office of Economics, Environmental Analysis, and Administration, at (202) 565–1550.

[22] ODBC is a Windows technology that allows a data base software package, such as Microsoft Access, to import data from a data base created using a different software package. All data bases must be supported with adequate documentation on data attributes, SQL queries, programmed reports, etc.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34237]

Norfolk Southern Railway Company—Corporate Family Transaction Exemption—Memphis and Charleston Railway Company

Norfolk Southern Railway Company (NSR) [1] and its subsidiary, Memphis and Charleston Railway Company (MCR),[2] have filed a verified notice of exemption. As part of a proposed corporate restructuring, MCR will be merged into NSR, with NSR as the surviving entity. Under the agreement and plan of merger, NSR will own all of the assets of MCR and will be responsible for all debts and obligations of MCR.

The transaction is scheduled to be consummated on or after October 1, 2002. The earliest the transaction could have been consummated was September 5, 2002, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the transaction is to eliminate MCR as a separate corporate entity, simplify the corporate structure of NSR and the NSR system, and eliminate costs associated with separate accounting, tax, bookkeeping and reporting functions. The proposed transaction will further the goal of corporate simplification.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties stated that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

[1] NSR is a Class I carrier, and its railroad subsidiaries own or operate approximately 21,500 miles of railroad located in 22 states, the District of Columbia, and the Province of Ontario. NSR is controlled through stock ownership by Norfolk Southern Corporation, a noncarrier holding company.

[2] MCR owns approximately 34 miles of railroad located in the State of Mississippi, that have been leased to NSR or its predecessors since 1898.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Although applicants do not expect any employees to be adversely affected by this merger and control transaction, they have agreed to apply employee protective conditions pursuant to 49 U.S.C. 11326(a). Therefore, any employees adversely affected by the merger and control transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34237 must be filed with the Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David A. Shelton, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–9241.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV*.''

Decided: September 20, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–24432 Filed 9–26–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 18, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 28, 2002, to be assured of consideration.

Customs Service (CUS)

OMB Number: 1515–0061.
Form Number: Customs Form 1304.
Type of Review: Extension.
Title: Crew Effects Declaration.
Description: Customs Form 1304 is completed by the master of the arriving carrier to record and list the crew's effects that are accompanying them on the trip, which are defined as merchandise under U.S. statutes. It is also used by the master of the vessel to attest to the truthfulness of the merchandise being carried aboard the vessel.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 9,000.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 17,168 hours.

OMB Number: 1515–0065.
Form Number: Customs Form 7501 and 7501A.
Type of Review: Extension.
Title: Entry Summary and Continuation Sheet.
Description: Customs Form 7501 is used by Customs as a record of the import transaction, to collect proper duty, taxes, certifications and enforcement endorsements, and to provide copies to Census for statistical purposes.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents: 38,500.
Estimated Burden Hours Per Respondent : 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 6,627,678 hours.

OMB Number: 1515–0069.
Form Number: Customs Forms 3461 and 3461 Alternate.
Type of Review: Extension.
Title: Immediate Delivery Application.
Description: Customs Form 3461 and 3461 Alternate are used by importers to provide Customs with the necessary information in order to examine and release imported cargo.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 13,324.
Estimated Burden Hours Per Respondent: Customs Form 3461—15 minutes. 3461 Alternate—3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,775,043 hours.

OMB Number: 1515–0124.
Form Number: None.
Type of Review: Extension.
Title: Disclosure of Information on Vessel Manifest.
Description: This information is used to grant a domestic importer's consignees, and exporter's request for confidentiality of its identity from public disclosure.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 578.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 289 hours.

OMB Number: 1515–0151.
Form Number: None.
Type of Review: Extension.
Title: Foreign Trade Zones Annual Reconciliation and Record Keeping Requirement.
Description: Each Foreign Trade Zone Operator will be responsible for maintaining its inventory control in compliance with statute and regulations. The operator will furnish Customs an annual certification of their compliance.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Recordkeepers: 260.
Estimated Burden Hours Per Recordkeeper: 45 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 195 hours.

OMB Number: 1515–0178.
Form Number: None.
Type of Review: Extension.
Title: Automotive Products Act of 1965.
Description: Under the Automotive Products Trade Act (APTA), Canadian articles may enter the United States so long as they are intended for use as original motor vehicle equipment in the United States. If diverted to other purposes, they are subject to duties. This information collection is issued to track these diverted articles and to collect the proper duties on them.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 75.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.

Estimated Total Reporting Burden: 425 hours.

OMB Number: 1515–0212.

Form Number: None.

Type of Review: Extension.

Title: Prior Disclosure.

Description: This collection of information is required to implement a provision of the Customs Modernization portion of the North American Free Trade Implementation Act concerning prior disclosure by a person of a violation of law committed by that person involving the entry or introduction or attempted entry or introduction of merchandise into the United States by fraud, gross negligence or negligence, pursuant to 19 U.S.C. 1592(c)(4), as amended.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 3,500.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,500 hours.

Clearance Officer: Tracey Denning, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229. (202) 927–1429.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. (202) 395–7316.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–24559 Filed 9–26–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 19, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 28, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1091.

Form Number: IRS Form 8810.

Type of Review: Extension.

Title: Corporate Passive Activity Loss and Credit Limitations.

Description: Under section 469, losses and credits from passive activities, to the extent they exceed passive income (or, in the case of credits, the tax attributable to net passive income), are not allowed. Form 8810 is used by personal service corporations and closely held corporations to figure the passive activity loss and credits allowed and the amount of loss and credit to be reported on their tax return.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 100,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—26 hr., 18 min.
Learning about the law or the form—5 hr., 15 min.
Preparing and sending the form to the IRS—5 hr., 55 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 3,749,000 hours.

OMB Number: 1545–1675.

Regulation Project Number: REG–122450–98 Final; REG–100276–97 and REG–122450–98 NPRM.

Type of Review: Extension.

Title: Real Estate Mortgage Investment Conduits; Financial Asset Securitization Investment Trusts; and Real Estate Mortgage Investment Conduits.

Description: REG–122450–98 Sections 1.860E–1(c)(4)-(10) of the Treasury Regulations provide circumstances under which a transferor of a noneconomic residual interest in a Real Estate Investment Conduit (REMIC) meeting the investigation, and two representation requirements may avail itself of the safe harbor by satisfying either the formula test or asset test.

REG–100276–97; REG–122450–98 This regulation provides start-up and transitional rules applicable to financial asset securitization investment trust.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 620.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually, Other (one-time reporting requirement).

Estimated Total Reporting Burden: 1,220 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224. (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. (202) 395–7316.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–24560 Filed 9–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 20, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 28, 2002 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0034.

Form Number: ATF F 5000.9.

Type of Review: Extension.

Title: Personnel Questionnaire Alcohol and Tobacco Products.

Description: The information listed on ATF F 5000.9, Personnel Questionnaire, enables ATF to determine whether or not an applicant for an alcohol or tobacco permit meets the minimum qualifications. The form identifies the individual, residence, business background, financial sources for the business and criminal record. If the applicant is found not to be qualified, the permit may be denied.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 10,000 hours.

OMB Number: 1512–0171.

Form Number: ATF F 5220.3.
Type of Review: Extension.
Title: Inventory—Export Warehouse Proprietor.
Description: ATF F 5220.3 is used by export warehouse proprietors to record inventories that are required by law and regulations.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 5 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 50 hours.
OMB Number: 1512–0185.
Form Number: ATF F 5400.5.
Type of Review: Extension.
Title: Report of Theft or Loss of Explosives.
Description: Losses or theft of explosives must, by statute, be reported within 24 hours of the discovery of the loss or theft. This form contains the minimum information necessary for ATF to initiate criminal investigations.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 150.
Estimated Burden Hours Per Respondent: 1 hour, 48 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 270 hours.
OMB Number: 1512–0493.
Form Number: ATF F 5300.3.
Type of Review: Extension.
Title: Letterhead Request for Information in Regard to Federal Firearms Dealer's Records (Dealer's Records of Acquisition, Disposition & Supporting Data).
Description: This letter gives the user a simplified format to list the required information ATF needs to perform its functions in regard to the law. The respondent saves time because the questions are simple and a return address is supplied. The form is used to maintain a current status of firearms licensees.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 28,000.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,380 hours.
OMB Number: 1512–0549.
Form Number: ATF F 6330.1.
Type of Review: Extension.
Title: Application for National Firearm Examiner Academy.
Description: The Office of Training and Professional Development at ATF has developed a new training program for entry level firearm and toolmark examiners. The application will allow ATF to process eligible candidates.
Respondents: State, Local or Tribal Government, Federal Government.
Estimated Number of Respondents: 75.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 13 hours.
OMB Number: 1512–0571.
Form Number: ATF F 5330.20.
Type of Review: Extension.
Title: Certificate of Compliance with 18 U.S.C. 922(g)(5)(B).
Description: This information collection is needed in order to verify that nonimmigrant aliens are in compliance with applicable importation laws and regulations.
Respondents: Individuals or households.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Respondent: 3 minutes.
Estimated Total Reporting Burden: 150 hours.
Clearance Officer: Jacqueline White, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental Reports Management Officer.
[FR Doc. 02–24630 Filed 9–26–02; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of Paperless Drawback Prototype Test

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs plan to conduct a prototype test to determine the feasibility of filing paperless drawback claims. The Paperless Drawback prototype will provide for a ''paperless'' process that allows approved participants to electronically file drawback claims using the Automated Broker Interface of Customs Automated Commercial System. The Paperless Drawback prototype is limited to drawback claims filed at the New York/Newark Drawback Center. This notice invites public comment concerning any aspect of the planned prototype, informs interested members of the public of the eligibility, procedural and documentation requirements for voluntary participation in the Paperless Drawback prototype, and outlines the evaluation methodology to be used in the test.

DATES: Drawback claimants who wish to participate in the Paperless Drawback prototype must submit applications to Customs no later than October 28, 2002. The Paperless Drawback prototype will commence no earlier than August 1, 2002, and will run for approximately one year with a final evaluation taking place at the end of the first year.

ADDRESSES: Written comments regarding this notice, and prototype applications, should be addressed to the U.S. Customs Service, Entry and Drawback Management Branch, 1300 Pennsylvania Avenue, NW., Room 5.2–33, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Questions pertaining to any aspect of this prototype should be directed to Sherri Lee Hoffman, U.S. Customs Service, Entry and Drawback Management Branch, at (202) 927–0300 or via email at *sherri.lee.hoffman@customs.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

Paperless Drawback: Planned Component of the National Customs Automation Program (NCAP)

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subpart B of title VI of the Act concerns the National Customs Automation Program (NCAP), an electronic system for the processing of commercial importations.

Within subpart B, section 631 of the Act added section 411 to the Tariff Act of 1930 (19 U.S.C. 1411–1414), which defines the NCAP, provides for the establishment of and participation in the NCAP, and includes a list of existing and planned components. Section 411(a)(2)(F) identifies the electronic (*i.e.*, paperless) filing of drawback claims, records or entries as a planned NCAP component.

Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)) provides for the testing of NCAP planned

components. The Paperless Drawback prototype is being tested in accordance with this provision.

Description of Paperless Drawback Prototype

The Paperless Drawback prototype provides for a ''paperless'' process that permits approved participants to electronically file drawback claims using the Automated Broker Interface (ABI) of Customs Automated Commercial System (ACS). Approved participants are encouraged to file drawback claims electronically at the New York/Newark Drawback Center where feasible; however, traditional ''paper'' drawback claims may also be filed by approved prototype participants where necessary.

The Paperless Drawback prototype will commence no earlier than August 1, 2002, and will run for approximately one year with a final evaluation taking place at the end of the first 12-months of the prototype.

At this time, the Paperless Drawback prototype is limited to drawback claims filed at the New York/Newark Drawback Center to permit Customs to assess the feasibility of filing electronic drawback claims on a nationwide basis. The Paperless Drawback prototype is also limited to the New York/Newark Drawback Center to assist Customs in processing the drawback claims that were lost on September 11, 2001, as a result of the destruction of the New York Customhouse located at 6 World Trade Center, without having to reconstruct each of those claims. It is noted that the New York/Newark Drawback Center will also continue to accept paper drawback claims.

Prototype participants are permitted to electronically file through ABI all the information that is required for traditional drawback claims pursuant to part 191 of the Customs Regulations (19 CFR part 191). In addition, participants will be required to provide Customs with specific information as to the ''earliest export date'' (*i.e.*, the date of the first export in a given claim). Submission of ''earliest export date'' data is necessary in a paperless environment to enable ACS to determine whether the drawback claim is timely (*i.e.*, whether the earliest export date falls within the prescribed regulatory time limits for filing a drawback claim).

Customs will spot check claims for valid export information as necessary and prototype participants remain subject to audit by Customs Regulatory Audit Division.

Objectives of Paperless Drawback Prototype

Customs objectives in conducting the Paperless Drawback prototype test are as follows:

(1) Reduce/eliminate need to reconstruct paper drawback claims for the drawback unit that was destroyed at 6 Word Trade Center, New York, and moved to Newark;

(2) Assess feasibility of filing electronic drawback claims on a nationwide basis; and

(3) Reduce space necessary to retain records.

Eligibility Requirements

To be eligible to participate in the Paperless Drawback prototype a candidate must be:

(1) Approved to use ABI (19 CFR 143.3);

(2) Approved to use Accelerated Payment (19 CFR 191.92);

(3) Approved for waiver of Prior Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback (19 CFR 191.91); and

(4) Able to use the Export Summary Procedure (19 CFR 191.73).

Application Procedure

Written applications from drawback claimants who wish to participate in the Paperless Drawback prototype must be received by Customs no later than October 28, 2002. Customs brokers must file a separate application for each claimant that they wish to submit paperless drawback claims for under this prototype. Applications should be submitted to U.S. Customs Service, Entry and Drawback Management Branch, 1300 Pennsylvania Avenue, NW., Room 5.2–33, Washington, DC 20229. Customs will issue written notification to applicants who are selected to participate in the Paperless Drawback prototype. It is noted that participation in the Paperless Drawback prototype is not confidential, and that lists of participants will be made available to the public.

Paperless Drawback prototype applications must include the following information:

(1) Company name, address, telephone number, facsimile number, email address (if applicable), and point of contact.

(2) Name of Client Representative assigned to company for ABI;

(3) Anticipated number of claims that will be processed during the one-year period of the prototype;

(4) Types of drawback claims that will be filed (*i.e.*, pursuant to 19 U.S.C. 1313(a), 1313(b), 1313(c), 1313(j)(1), 1313(j)(2) or 1313(p));

(5) A brief statement describing the nature of the drawback operation;

(6) A statement describing all records to be maintained, address of document retention site, and name of designated recordkeeping contact; and,

(7) A statement describing how the applicant's business records substantiate the subject drawback claim, as per the statute and regulations.

Recordkeeping Requirements

The following lists offer examples of business records that are used to support different types of drawback claims. The lists are not comprehensive, and are offered as general guidelines as to the types of documentation that may prove useful for purposes of substantiating a drawback claim. Prototype participants are advised to consult the Customs Drawback Informed Compliance publication for guidance as to the types of documents that are to be maintained for each type of drawback claim. This publication is available to the public on the Customs website, at *www.customs.treas.gov*. It is further noted that participants in the Paperless Drawback prototype remain subject to the applicable recordkeeping requirements set forth in the regulations.

Claimant records must identify the merchandise or event or, in the alternative, the claimant must be able to establish, to Customs satisfaction, a clear link between the record and the merchandise or event.

Records Establishing Importation and Receipt of Imported Merchandise

The following records may be used to establish importation and receipt of imported merchandise:

(1) Customs import documents such as the Customs Form (CF) 7501 (Entry Summary) or a certificate of delivery supporting the receipt of imported merchandise;

(2) Purchase orders or contract of purchase, invoices, packing lists, vendor confirmations;

(3) Accounts payable, disbursements, letters of credit, payment documents;

(4) Receipts, inventory records, perpetual or physical transaction log, stores control; and

(5) Import bills of lading, delivery records from point of import to plant.

Records Establishing Manufacture or Production (19 U.S.C. 1313(a) and (b))

The following records may be used to establish manufacture or production:

(1) Inventories for raw materials, work in process, finished goods or, in certain large assembly operations, a comprehensive inventory control

system where receipt and shipment of the product are shown by receiving and shipping documents. The inventory records should include references that are traceable to both the source of the material and the material's destination. Use is shown by a bill of materials that identifies the raw materials required, the raw materials withdrawals showing the materials that were ''used in'' or ''appear in'' the finished goods, the labor routing or travelers that show which department performed the manufacturing operation, and finished goods inventory reduction which shows that those goods were withdrawn from inventory. Due care must be used to maintain evidence (*i.e.* the bills of material must be dated and current) and inventories must be reconciled periodically;

(2) Bills of material, formulas, scrap or waste records (to the extent that the claimant can show that the bill of materials or formula demonstrates manufacture or production of the manufactured article in question);

(3) Job or work orders, inventory picks, travelers, serial or lot number control records, particularly in the case of subsection 1313(a) direct identification manufacturing drawback;

(4) Inventory methodologies (*e.g.*, inventory turnover rates or ''turns,'' FIFO (first-in, first-out)), or other inventory identification methods as provided in 19 CFR 191.14); and

(5) Stores requisition, work in process records showing that production occurred.

Records Establishing Substitution (19 U.S.C. 1313(b) and (k))

Records must be retained that establish that the imported and substituted merchandise were of the same kind and quality for purposes of subsections 1313(b) and 1313(k) (the imported and substituted merchandise were commercially interchangeable for purposes of subsection 1313(j)(2), or the qualified article and the exported article were of the same kind and quality for purposes of subsection 1313(p)).

Records for these categories of merchandise must describe the compared goods with adequate specificity to ensure that the requirements for substitution are met. Generally, these records should reflect and be related to the particular requirement for substitution. For example, for commercial interchangeability drawback under subsection 1313(j)(2), the factors to be considered include, but are not limited to, Governmental and recognized industrial standards, part numbers, tariff classification, and value. *See* 19 CFR 191.32 (c). Therefore, the records retained in conjunction with a commercial interchangeability drawback claim should reflect the aforementioned specifications for the imported and substituted merchandise. Additionally, any other records relating to commercial interchangeability should be retained, and may include such items as:

(1) Certifications regarding grade, specification, and content (*i.e.*, Government certifications for the USDA or FDA, or industry/independent certifications such as weighers or gaugers);

(2) Sales contracts, customer purchase order specifications, commercial invoices, inventories;

(3) In-house lab reports, engineering specifications;

(4) Bills of material, description of the manufacturing process, flow charts for the manufacturing process (for substitution drawback pursuant to subsection 1313(b)); and

(5) Import entry documentation (Entry and Entry Summary) and export documentation (Shipper's Export Declaration (SED)).

Records Establishing Use (1313(j))

Records must show that the imported merchandise or the commercially interchangeable substituted merchandise, under subsection 1313(j), has not been used in the United States before exportation or destruction. Records for this purpose may include inventories, material requisitions, travelers or labor routing sheets or other material movement documents, or other records that show that the claimed merchandise was not used prior to exportation or destruction. For example, records of receipt into a storage warehouse and withdrawal from that storage warehouse could establish evidence of non-use.

Records Establishing Non-conformance, Shipped Without Consent, or Defect (1313(c))

These records are used to show that the imported merchandise did not conform to sample or specifications, was shipped without the consent of the consignee, or was determined to be defective as of the time of importation. Because no substitution is provided under this subsection, merchandise must be traceable to receipts, inventory or other accounting records and exports must be correlated with imports.

Records establishing non-conformance, shipped without consent or defect may include:

(1) A signed agreement between the importer and the foreign supplier that the imported merchandise was defective at the time of importation;

(2) Purchase orders, contracts, sales confirmations, and specifications (in each case, linked to the specifications of the merchandise); and

(3) A signed statement from the consignee attesting to the fact that the merchandise had been shipped without consent.

Records Establishing Exportation

Records used to show exportation must include one or more items from item 1 below, and be reconcilable with some of the items listed in items 2 through 4, below. To establish that particular merchandise was exported, a paper trail is needed to trace the merchandise from the finished goods or other inventory to the vessel, air carrier, or land carrier that actually takes the merchandise out of the U.S. The trail must include a bill of lading or other document that is issued by the exporting carrier, or other third party such as foreign Customs, and include time and fact of exportation. Generally, a bill of lading will reference an invoice or other document that can be traced to withdrawal of the goods from the claimant's inventory.

(1) An originally signed bill of lading, air or freight waybill, Canadian Customs manifest, cargo manifest, notice of foreign trade zone transfer, foreign Customs document, landing certificate, delivery record from plant to export, captain's loading ticket, loading report, shipping release, or certified copies thereof. *See* 19 CFR 191.72;

(2) Sales invoice, packing list, customer purchase order/sales contracts;

(3) Receivables, cash receipts; and

(4) Warehouse withdrawals, inventory pick lists, finished goods inventories, transaction log.

Records for Destruction

Records must specifically identify the merchandise or articles destroyed. As with exportation, to support the destruction of a particular item a paper trail is needed to trace the item from the finished goods or other inventory to the place of actual destruction. The trail must include documents of transfer, receipt, and transportation (including inventory withdrawals and/or financial records that can be related to the destroyed merchandise or articles), and must include the time and fact of destruction.

Records establishing destruction may include:

(1) Affidavits from disinterested third parties, such as wrecking companies and landfill operators, attesting as to

what they witnessed (*e.g.*, goods were crushed and then ground up into one inch diameter pebbles'') or whatever the actual destruction process was and what happened to any residue or remainder (*e.g.*, buried or incinerated);

(2) Photographs of the destruction to accompany affidavits; and

(3) Reports from other Government agencies (*e.g.*, EPA, certifying destruction).

Denial of Application to Participate in Paperless Drawback Prototype

Customs will issue written notification to any party whose application to participate in the Paperless Drawback prototype is denied. The written notice will set forth the reasons for the denial and inform the applicant that the denial may be appealed within 30 days of the date of the notice.

The appeal should include substantiating documentation that establishes, to Customs satisfaction, that the alleged deficiencies that led to the denial did not occur or have been corrected. The appeal should be addressed to U.S. Customs, Trade Programs, Executive Director, 1300 Pennsylvania Avenue, NW., Room 5.2–33, Washington, DC 20229. Customs will issue a written determination to the applicant within 30 days of receipt of the appeal.

Applicants who are denied participation in the Paperless Drawback prototype who do not appeal, or applicants who have had an appeal denied, may reapply if Customs subsequently reopens the application period. Customs will publish a notice in the **Federal Register** announcing any subsequent reopening of the application period.

Changes to Application Information

Throughout the prototype period, participants must provide Customs with advance notification of any changes to the information provided in the application. This notification must be provided to Customs at least seven days before the effective date of a change and will be considered an amendment to the application. By written notice to the participant, Customs may reject such an amendment or suspend the party from further participation in the prototype.

Misconduct Under Prototype

All participants in the Paperless Drawback prototype are required to abide by the terms and conditions of this notice. A participant may be suspended from the prototype, subject to penalties and other administrative sanctions, and/or prevented from participation in future prototypes if a participant fails to:

(1) Maintain a sufficient level of compliance;

(2) File accurate and timely data;

(3) Supply Customs with requested information;

(4) Cooperate fully in a Drawback Compliance Assessment, Focus Assessment or audit;

(5) Provide timely and accurate data and adequate resources in support of a Drawback Compliance Assessment, Focus Assessment or audit, or comply fully with the terms of a Compliance Improvement plan;

(6) Maintain sufficient continuous bond coverage; or

(7) Exercise reasonable care in following the Paperless Drawback prototype procedures and obligations outlined in this notice, including all other applicable laws and regulations.

Suspension From Participation in Paperless Drawback Prototype

Customs has the discretion to suspend a Paperless Drawback prototype participant based on the determination that an unacceptable compliance risk exists, or for misconduct as described in the ''Misconduct Under Prototype'' section of this notice. Except in the case of willfulness on the part of a prototype participant, or where public health, interest or safety is concerned, written notice of a proposed suspension will be issued by Customs to the participant on a prospective basis. The notice of pending suspension will set forth the reasons for the action. The participant may appeal such decision, in writing, within 15 days of receipt of Customs suspension notification. The appeal should include substantiating documentation that establishes, to Customs satisfaction, that the alleged deficiencies that led to the pending suspension did not occur or have been corrected. The appeal should be addressed to U.S. Customs, Trade Programs, Executive Director, 1300 Pennsylvania Avenue, NW., Room 5.2–33, Washington, DC 20229. Customs will issue a written determination to the participant within 30 days of receipt of the appeal. If no appeal is timely submitted, the suspension will go into effect as of the date set forth in the notice of suspension. If an appeal is timely submitted, Customs will hold the suspension in abeyance until such time as a written determination based on the appeal has been issued.

Prototype Evaluation

Participation in the Paperless Drawback prototype is not deemed confidential information. Lists of participants and evaluation results will be made available to the public by means of the Customs Electronic Bulletin Board and the Customs Administrative Message System, and upon written request. Also, upon conclusion of the prototype, the final results will be published in the **Federal Register** and the Customs Bulletin and reported to Congress.

Dated: September 24, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–24589 Filed 9–26–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Modification and Clarification of Procedures of the National Customs Automation Program Test Regarding Reconciliation

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document announces modifications to the Customs Automated Commercial System (ACS) Reconciliation prototype test regarding NAFTA Reconciliation entries, the method for filing Reconciliation entries covering flagged entry summaries for which liquidated damages have been assessed, acceptance of compact disks for Reconciliation spreadsheets, and applicability to test participants of previously suspended regulatory provisions of part 111, Customs Regulations. Other than these modifications, the test remains the same as set forth in previously published **Federal Register** notices. The document also provides clarifications and reminders to test participants regarding certain other aspects of the test and announces the new address for Reconciliation submissions for the port of NY/Newark.

DATES: Effective as of January 27, 2003, the previously suspended regulatory provisions of part 111 of the Customs Regulations will be applicable to Reconciliation test participants. Effective as of December 26, 2002, are the following three Reconciliation test modifications: (1) Test participants who have flagged an entry summary for NAFTA Reconciliation must file a NAFTA Reconciliation entry to make a post-entry claim for NAFTA under 19 U.S.C. 1520(d); (2) where a test participant amends a timely filed NAFTA Reconciliation entry after it is returned by Customs for correction, the

test participant cannot add entry summaries to those that were covered in the original Reconciliation entry; (3) a Reconciliation entry filed in response to a monthly liquidated damages claim for no-file violations cannot include flagged entry summaries that are not in violation. Effective September 27, 2002, test participants may submit Reconciliation spreadsheet line item data via compact disks. The two-year testing period of this Reconciliation prototype commenced on October 1, 1998, and was extended indefinitely starting October 1, 2000. Applications to participate in the test will be accepted throughout the duration of the test.

ADDRESSES: Written inquiries regarding participation in the Reconciliation prototype test and/or applications to participate should be addressed to Mr. John Leonard, Reconciliation Team, U.S. Customs Service, 1300 Pennsylvania Ave. NW., Room 5.2A, Washington, DC 20229–0001. Answers to inquiries regarding the test are also available at *Recon.Help@customs.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Leonard at (202) 927–0915 or Ms. Christine Furgason at (202) 927–2293.

SUPPLEMENTARY INFORMATION:

Background

Reconciliation, a planned component of the National Customs Automation Program (NCAP), as provided for in Title VI (Subtitle B) of the North American Free Trade Agreement Implementation Act (the NAFTA Implementation Act; Public Law 103–182, 107 State. 2057 (December 8, 1993)), is currently being tested by Customs under the Customs Automated Commercial System (ACS) Prototype Test. Customs announced and explained the test in a general notice document published in the **Federal Register** (63 FR 6257) on February 6, 1998. Clarifications and operational changes were announced in four subsequent **Federal Register** notices: 63 FR 44303 published on August 18, 1998; 64 FR 39187 published on July 21, 1999; 64 FR 73121 published on December 29, 1999; and 66 FR 14619 published on March 13, 2001. A **Federal Register** (65 FR 55326) notice published on September 13, 2000, extended the prototype indefinitely.

As announced in a previously published document on Reconciliation (August 18, 1998), certain regulations of part 111 of the Customs Regulations were suspended for test participants (sometimes referred to as importers). This document announces that those regulations are no longer suspended.

Also, since commencement of the test, Customs has monitored the test's operation and has observed several practices engaged in by test participants that are not consistent with the procedures Customs expects participants to follow. Consequently, this document modifies the test with respect to North American Free Trade Agreement (NAFTA) Reconciliation entries and the method for filing Reconciliation entries covering flagged entry summaries for which liquidated damages have been assessed, and provides clarifications and reminders concerning other aspects of the test regarding: reduced-data, no-change Aggregate Reconciliation entries; maintenance of bond riders covering Reconciliation entries; the right to file Reconciliation entries; and the ''port'' column data element of the line item spreadsheet.

The document also modifies the test regarding use of compact disks for Reconciliation spreadsheets.

Aside from the above modifications, including the removal of the suspension of the part 111 regulations, the test remains as set forth in the previously published **Federal Register** notices.

Finally, the document sets forth the new address for submitting Reconciliation entries for the port of NY/Newark.

For application requirements, see the **Federal Register** notices published on February 6, 1998, and August 18, 1998. Additional information regarding the test can be found at *http://www.customs.gov/recon.*

Reconciliation Generally

Reconciliation is the process that allows an importer, at the time an entry summary is filed, to identify undeterminable information (other than that affecting admissibility) to Customs and to provide that outstanding information at a later date. The importer identifies the outstanding information by means of an electronic ''flag'' which is placed on the entry summary at the time the entry summary is filed and payment (applicable duty, taxes, and fees) is made. The issues for which an entry summary may be ''flagged'' (for the purpose of later reconciliation) are limited and relate to: (1) Value issues; (2) classification issues, on a limited basis; (3) ''9802 issues,'' those concerning value aspects of entries filed under heading 9802, Harmonized Tariff Schedule of the United States (HTSUS)); and (4) NAFTA issues, those concerning merchandise entered under the North American Free Trade Agreement (NAFTA).

The flagged entry summary (the underlying entry summary) is liquidated for all aspects of the entry except those issues that were flagged. The means of providing the outstanding information at a later date relative to the flagged issues is through the filing of a Reconciliation entry. The flagged issues will be liquidated at the time the Reconciliation entry is liquidated. Any adjustments in duties, taxes, and/or fees owed will be made at that time. (See the February 6, 1998, **Federal Register** notice for a more detailed presentation of the basic Reconciliation process.)

Test Modifications

Use of Reconciliation to Make Post-Entry NAFTA Claims

Ordinarily, a claim for duty-free treatment under NAFTA is made at the time of entry; however, in some circumstances, an importer is unable to make the claim at that time. In that instance, an importer may make a post-entry NAFTA claim under the authority of 19 U.S.C. 1520(d). This provision authorizes Customs to reliquidate an entry, notwithstanding that a valid protest under 19 U.S.C. 1514 was not filed, to refund excess duties paid when imported merchandise qualifies for NAFTA treatment but a claim for NAFTA was not made at the time of entry. Under § 181.33(c)(1), Customs has accepted 1520(d) NAFTA claims after entry but before liquidation; these claims do not require reliquidation.

There are two ways to make a 1520(d) NAFTA claim: One way is to file an individual 1520(d) claim in accordance with the procedures set forth in subpart D of part 181 of the Customs Regulations (hereafter referred to as a part 181 NAFTA claim), and the other is to make a 1520(d) claim in accordance with the Reconciliation process (hereafter referred to as a NAFTA Reconciliation claim). No action is required at the time of entry when a part 181 NAFTA claim is later filed within one year of the date of importation. In contrast, a NAFTA Reconciliation claim requires following Reconciliation test procedures: the importer flags entry summaries for NAFTA and files, within one year of the date of importation, a NAFTA Reconciliation entry that resolves the NAFTA issue for those entries. (The filing of the Reconciliation entry, not the mere flagging of the entry summaries, constitutes the making of the NAFTA claim under the Reconciliation process.)

In monitoring the test, Customs observed that importers, in some instances, flagged entry summaries for a

NAFTA Reconciliation and then filed a separate part 181 NAFTA claim covering those same entry summaries. In other instances, Customs observed that importers filed part 181 NAFTA claims and a NAFTA Reconciliation entry covering the same entry summaries, representing a double claim.

In fairness, Customs notes that it made allowances during the first year or more of the test relative to the filing of NAFTA Reconciliation claims while importers changed internal procedures and practices. Also, during the initial period of the test, Customs was unable to liquidate NAFTA Reconciliation entries due to ACS programming development. Consequently, some importers may have been allowed to submit separate part 181 NAFTA claims after flagging for NAFTA Reconciliation the same entry summaries covered in those part 181 NAFTA claims. Customs notes, however, that participants have had ample time to adjust their procedures and practices. Also, Customs now has full Reconciliation liquidation programming capability and has been liquidating NAFTA Reconciliation entries and processing refunds since April of 2001. Thus, Customs will no longer accept the practice by test participants of filing separate part 181 NAFTA claims covering the same entry summaries already flagged for NAFTA Reconciliation.

Beginning with the effective date of this change (see below), for entry summaries that are flagged for NAFTA issues, the filing of a Reconciliation entry will be considered the exclusive means to make a 1520(d) NAFTA claim for those entry summaries. After the flagging of entry summaries, the filing of a separate part 181 NAFTA claim covering any or all of those entry summaries will be considered duplicative and will not be accepted. If an importer wishes to make a part 181 NAFTA claim for a given entry summary, the importer should not flag that entry summary for NAFTA Reconciliation.

With this modification to the test, an importer who flags entry summaries for NAFTA Reconciliation in effect waives its ability to file a part 181 NAFTA claim covering those entry summaries and commits to making the post-entry NAFTA claim for those flagged entry summaries only through the filing of a NAFTA Reconciliation entry. This modification will ensure that Customs does not process duplicate post-entry NAFTA claims covering the same entry summaries, one under the part 181 procedures and another under Reconciliation procedures, and will thereby protect the revenue. Another problem this modification will resolve is the clogging up of the Reconciliation process from flagged entry summaries that have been abandoned.

In summary, once entry summaries are flagged for NAFTA under the test, the importer has two options: (1) Make the NAFTA Reconciliation claim for the flagged entry summaries by timely filing a Reconciliation entry under the test procedure or (2) choose not to file a Reconciliation entry and let the NAFTA claim for the flagged entry summaries lapse with the passage of the filing deadline. Customs expects that importers who flag entry summaries for NAFTA Reconciliation understand that they make a commitment to file a NAFTA Reconciliation entry to make the 1520(d) NAFTA claim and that they waive the ability to make that claim any other way.

The table below highlights the options available to importers for filing a 1520(d) NAFTA claim, as well as the options available to a Reconciliation test participant who chooses to flag an entry summary for a NAFTA issue:

OPTIONS FOR MAKING POST-ENTRY NAFTA CLAIM UNDER 1520(D)

Part 181 procedure	Reconciliation procedure
File a claim pursuant to procedures set forth in subpart D, part 181 of the Customs Regulations within one year of date of importation. No action required at the time of entry.	Flag entry summary for NAFTA Reconciliation at time of entry. After flagging the entry summary, do one of the following:
Does not apply to entry summaries that have been flagged for NAFTA Reconciliation. A part 181 claim covering entry summaries that have been flagged for Reconciliation will be rejected. For flagged entry summaries, see column 2, ''Reconciliation Procedure.''.	(1) Resolve the NAFTA claim for the flagged entry summary(ies) by timely filing a Reconciliation entry under the test procedure; or (2) Choose not to file a Reconciliation entry and let the NAFTA claim for the flagged entry summaries lapse with the passage of the filing deadline.

This test modification is effective 90 days after the date of publication of this document in the **Federal Register**. The Reconciliation test procedure for making post-entry NAFTA claims is explained in the February 6, 1998, and December 29, 1999, **Federal Register** notices.

Finally, Customs recommends the use of the Reconciliation test for making post-entry NAFTA claims because the test procedure provides the importer with several benefits. First, using the test procedure is a simpler means of filing claims; the importer is able to make potentially thousands of NAFTA claims on one Reconciliation. Second, the importer can receive one check from Customs rather than many (even up to thousands) upon Customs liquidation of a Reconciliation entry and issuance of a refund. Third, because processing NAFTA claims under Reconciliation is simpler for Customs, the refund delivery system is more efficient.

Amendment of Timely Filed NAFTA Reconciliation Entries

Under the test, participants can amend timely filed NAFTA Reconciliation entries when Customs rejects a Reconciliation entry and returns the entry to the participant for correction. In monitoring the test, Customs observed that, some importers amending timely filed NAFTA Reconciliation entries added entry summaries to the corrected Reconciliation entry upon returning it to Customs for processing and eventual liquidation. The result has been that entry summaries that were time-barred from Reconciliation because they were not covered by a timely filed Reconciliation entry were liquidated in the Reconciliation process.

Up to now, Customs has accepted this practice but here announces that, effective 90 days after publication of this document in the **Federal Register**, the practice will no longer be accepted. Thus, when Customs rejects a NAFTA Reconciliation entry for correction, no additional underlying entry summaries (whether or not time-barred) may be added to that NAFTA Reconciliation when it is resubmitted. This modification will streamline the NAFTA Reconciliation process, improve Customs efficiency in processing claims, and better protect the revenue against double claims.

Liquidated Damages for No-file Reconciliation Entries

Provisions regarding the assessment of liquidated damages against participants in the Reconciliation test for failure to file or late filing of Reconciliation entries and/or moneys (duties, taxes, and/or fees) due with these entries were announced in the December 29, 1999, **Federal Register** notice and modified in the March 13, 2001, **Federal Register** notice. This document announces an additional modification of the test's liquidated damages and mitigation guidelines relative to no-file Reconciliation violations.

For each test participant that is identified by Customs as having committed no-file violations, *i.e.*, entry summaries flagged but no Reconciliation entry filed and the filing deadline has passed, Customs will issue monthly Reconciliation liquidated damages claims (CF 5955a Notice of Penalty or Liquidated Damages). A separate claim will be issued for each continuous bond number under which the affected flagged entry summaries were filed. (For example, if all affected flagged entry summaries involve one continuous bond, one CF 5955a claim covering all affected flagged entry summaries will be issued to the violating participant. If three continuous bonds are involved among all the affected flagged entry summaries, three CF 5955a claims will be issued to the violating participant, each claim covering only the affected flagged entry summaries filed under a particular bond.) Mitigation is afforded for no-file Reconciliation entries once the flagged entry summaries listed in the claim are properly reconciled. In this way, a Reconciliation entry filed by a participant to resolve a no-file violation is, in effect, a petition for mitigation.

In monitoring the test, Customs observed that participants commingle, on Reconciliation entries, flagged entry summaries listed as no-file violations on a CF 5955a with other flagged entry summaries that are not in violation. Up to now, Customs has allowed this practice but now modifies the test to stop the practice.

Under the new practice, participants who receive a monthly liquidated damages claim covering flagged entry summaries that have not been reconciled (representing no-file violations), and who seek to reconcile those flagged entry summaries, must submit a Reconciliation entry (or Reconciliation entries) that contains only those flagged entry summaries listed on the CF 5955a. By limiting these Reconciliation entries to the flagged entry summaries involved in the violations, Customs separates the Reconciliation liquidated damages/mitigation process from the ordinary Reconciliation liquidation process.

This test modification is effective 90 days after publication of this document in the **Federal Register**.

Acceptance of Compact Disks as Approved Reconciliation Spreadsheet Media

Customs announces a modification of the test to allow importers to submit Reconciliation spreadsheet line item data via compact disks, as well as 3.5 inch diskettes. All requirements regarding the content and format of the spreadsheet remain the same as described in prior **Federal Register** notices, including the requirement that a hard copy be submitted to the processing port (unless this requirement is waived by the port).

This modification to the test is effective on the date this document is published in the **Federal Register**.

Regulations No Longer Suspended

The August 18, 1998, **Federal Register** notice included a section on regulatory provisions suspended and referred to part 111 of the Customs Regulations. This document announces that the provisions of part 111 are no longer suspended for Reconciliation test participants. Regulations providing for the licensing of, and the granting of permits to, customs brokers must be complied with. This includes compliance with § 111.2(b)(2)(i)(C) which requires a national permit issued under § 111.19(f) for a broker participating in the test to transact customs business within a district for which the broker does not have a district permit.

This modification to the test is effective 120 days from the date this document is published in the **Federal Register**. Affected customs brokers participating in the test must have a valid national permit by that date.

Clarifications and Reminders

Reduced-Data, No-Change Aggregate Reconciliation Entries

After the importer obtains the information that was undeterminable at the time underlying entry summaries were filed and flagged, the importer files a Reconciliation entry that provides that information (by the deadline applicable to the kind of issue flagged). There are two basic types of Reconciliation entries: the Aggregate Reconciliation entry (or Aggregate Reconciliation) and the Entry-by-Entry Reconciliation entry (or Entry-by-Entry Reconciliation).

The Aggregate Reconciliation contains a list of the underlying entry summaries covered and the aggregate revenue adjustment relative to those entry summaries. Aggregate Reconciliations can be used to report an increase in duties, taxes, and fees owed or no change in the amounts already paid when the underlying entry summaries were filed; decreases may be reported in an Aggregate Reconciliation only when the importer includes a statement waiving any claim to a refund for those decreases.

The Entry-by-Entry Reconciliation can be used to report an increase, decrease, or no-change in revenue (duties, taxes, and/or fees). Unlike the Aggregate Reconciliation, these Reconciliation entries show the revenue adjustment or no change in revenue relative to each entry summary covered. In order to receive a refund, the importer must file an Entry-by-Entry Reconciliation.

The March 13, 2001, **Federal Register** notice announced a new kind of Aggregate Reconciliation: The reduced-data, no-change Aggregate Reconciliation. These Reconciliation entries cover only entry summaries that show no change or adjustment (no increase or decrease) at the time the Reconciliation entry is filed. The reduced-data feature of this Aggregate Reconciliation relieves importers from having to provide, in the Reconciliation entry, the aggregate total of the original duties, taxes, and fees applicable to the underlying entry summaries. Importers have been using this feature of the test program since October 23, 2001, to close out flagged entry summaries that have no change in reportable data. On that date, Customs announced availability of the feature via ABI Administrative Message number 01–1152.

In monitoring the test, Customs recognized a need to clarify that the reduced-data, no-change Aggregate Reconciliation entry is for use only when the importer chooses to close out the Reconciliation with no further action; *i.e.*, when the importer does not anticipate making any changes/modifications whatsoever to that Reconciliation. These Reconciliation entries are not to be used for the single purpose of meeting the filing deadline with the intent to later amend the no-change Reconciliation entry, prior to its liquidation, when the still outstanding undeterminable information is obtained. If a reduced data, no-change Aggregate Reconciliation is filed, that entry will be liquidated immediately.

Test participants filing the reduced-data, no-change Aggregate

Reconciliation are reminded that they must still submit the ABI header document in hard copy to the processing port to which the ABI transmission is made. This header document should state: ''Spreadsheet is not provided because there are no adjustments to reportable data elements in this Reconciliation.'' Participants are required to transmit this same statement in the R15/R16 record of their ABI transmission. Failure to provide both the R15/R16 statement and the hardcopy document will constitute a failure to file violation.

Where a test participant who must file a Reconciliation entry to meet the filing deadline has yet to obtain the undeterminable information needed to resolve the flagged issue, that test participant should timely file a no-change Aggregate Reconciliation entry (*not a reduced data, no-change Aggregate Reconciliation entry*) providing the original duties, taxes, and fees data and, if possible, the best available information of changes expected, along with a letter requesting that Customs delay liquidation until the needed information is obtained.

''Port'' Column on the Reconciliation Line Item Spreadsheet

The data elements and specific columns of the Reconciliation line item spreadsheet were explained in the February 6, 1998, **Federal Register** notice and ABI Administrative Message number 99–0506, dated July 9, 1999. Because certain information was omitted from the sample spreadsheet, Customs is clarifying its instructions on properly completing the spreadsheet.

The sample spreadsheet included in the **Federal Register** notice (Durant Motor Corp.) has several blank fields in the port column among the fourteen rows listed. Customs notes that per U.S. Bureau of the Census requirements, all fields in the port column must be filled in with either: (1) The specific four digit port code applicable to the port where the merchandise represented by that line item was entered or (2) the word ''all'' to denote that the merchandise represented by that line item entered through multiple ports. This should eliminate any confusion regarding proper execution of the port column element of the spreadsheet.

Reconciliation Bond Riders

One of the requirements for participation in the Reconciliation test program is the submission of a Reconciliation bond rider. The bond rider is an addendum to the continuous entry bond required under the Customs Regulations (19 CFR part 113) and is designed to cover Reconciliation entries. Specific Reconciliation bond rider language can be found in the August 18, 1998, **Federal Register** notice.

During monitoring of the test, Customs discovered that bond riders have not always been filed properly. Thus, Customs reminds participants in the Reconciliation test program that updated Reconciliation bond riders should be submitted to the Customs port where the bond was filed, with a copy of the bond rider submitted to the Headquarters Reconciliation Team.

Updated Address and ABI Filing Information for NY/Newark Port 1001

Due to the terrorist attacks that destroyed the U.S. Customhouse at 6 World Trade Center in New York, the address for Reconciliation submissions for importers assigned to NY/Newark (port 1001) has changed. The new address is: U.S. Customs Service, 1210 Corbin Street, Elizabeth, NJ 07201. Filers may still transmit the ABI portion of their Reconciliations to port 1001.

Dated: September 24, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–24588 Filed 9–26–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209828–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209828 (TD 8758), Nuclear Decommissioning Funds; Revised Schedules of Ruling Amounts (§ 1.468A–3).

DATES: Written comments should be received on or before November 26, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the Internet *(Larnice.Mack@irs.gov),* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Nuclear Decommissioning Funds; Revised Schedules of Ruling Amounts.

OMB Number: 1545–1511.

Regulation Project Number: REG–209828–96.

Abstract: This regulation relates to requests for revised schedules of ruling amounts for nuclear decommisioning reserve funds under section 468A(d) of the Internal Revenue Code. The regulation eases the burden on affected taxpayers by permitting electing taxpayers with qualifying interests in nuclear power plants to adjust their ruling amounts under a formula or method rather than by filing a request for a revised schedule of ruling amounts.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 17, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–24671 Filed 9–26–02; 8:45 am]

BILLING CODE 4830–011–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8820

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8820, Orphan Drug Credit.

DATES: Written comments should be received on or before November 26, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Orphan Drug Credit.

OMB Number: 1545–1505.

Form Number: 8820.

Abstract: Filers use this form to elect to claim the orphan drug credit, which is 50% of the qualified clinical testing expenses paid or incurred with respect to low or unprofitable drugs for rare diseases and conditions, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 9 hours, 19 minutes.

Estimated Total Annual Burden Hours: 932.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 17, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–24672 Filed 9–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment to system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled ''Patient Fee Basis Medical and Pharmacy Records-VA'' (23VA136) as set forth in the **Federal Register** 40 FR 38095 dated 8/26/75 and amended in the **Federal Register** 58 FR 40852 dated 7/30/93. VA is revising the System Name and Number and amending the paragraphs for System Location; Purpose(s); Routine Uses of Records Maintained in the System; Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of records in the System, including Storage and Safeguards; and System Manager. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than October 28, 2002. If no public comment is received, the new system will become effective October 28, 2002.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed amended system of records to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to ''*OGCRegulations@mail.va.gov*''. All relevant material received before October 28, 2002 will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Privacy Act Officer (19), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (727) 320–1839.

SUPPLEMENTARY INFORMATION: The name and number of the system is changed from ''Patient Fee Basis Medical and Pharmacy Records-VA'' (23VA136) to

the ''Non-VA Fee Basis Records-VA'' (23VA163). The change in system name and number reflects organizational changes within the Department. The System Location; Purpose(s); Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of records in the System, including Storage and Safeguards have been amended to reflect changes in institutional names. Specifically, VA Central Office has been revised to VA Headquarters, VA Boston Development Center to VA Allocation Resource Center, VA Data Processing Center to Austin Automation Center (AAC), and DHCP to VISTA.

A new routine use is being added to allow for the disclosure of relevant information to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement. VA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. VA must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract. Routine use 1 is being deleted and the routine uses will be renumbered. The System Manager was amended to reflect the organizational changes of the Department. VA is republishing the system notice in its entirety.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: September 11, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

23VA163 ,

SYSTEM NAME:

Non-VA Fee Basis Records-VA.

SYSTEM LOCATION:

Paper records are maintained at VA health care facilities and Federal record centers. Information is stored also in automated storage media records that are maintained at: The health care facilities (in most cases, back-up computer tape information is stored also at off-site locations); Department of Veterans Affairs Headquarters, 810 Vermont Ave, NW., Washington, DC; the VA Allocation Resource Center, Braintree, Massachusetts; the VA Office of Information Field Offices (OIFOs); the Veterans Benefits Administration (VBA) Regional Directors and Division Offices; and the Austin Automation Center (AAC) located in Austin, Texas. Address locations for VA facilities are listed in VA Appendix 1 of the biennial Privacy Act Issuances publication.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Veterans who have applied for health care services under title 38, United States Code, Chapter 17.

2. Beneficiaries of other Federal agencies.

3. Pensioned members of allied forces who are provided health care services under Title 38, United States Code, Chapter 1.

4. Non-VA health care providers who provide fee basis services to veterans.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include information concerning patients who are authorized to obtain medical care and services from non-VA health care institutions and providers and the institutions and/or providers (*e.g.*, individuals, pharmacies, clinics or group practices, hospitals, nursing homes, physicians, psychologists, podiatrists, optometrists, nurses, and others) who furnish the authorized medical treatment, services, medications, or supplies. The patient information may include name, address, social security and VA claim numbers, medical conditions authorized for treatment, eligibility information related to such treatment, the date authorization for the services was issued and the period of validity, the amounts paid for travel benefits, the amounts reimbursed for services paid for by the patient, and information that pertains to the medical care. Information that is maintained concerning the health care institutions and providers may include name, address, social security or employer's taxpayer identification numbers, services rendered, fees charged and amounts paid for services rendered, and earnings for performing such services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, chapter 1, section 111 and chapter 17, sections 1703, 1710, 1712, 1720 and 1728.

PURPOSE(S):

The records or information are used for the purposes of reporting health care provider earnings to the Internal Revenue Service; producing various management and patient follow-up reports; responding to patient and other inquiries; statistical analysis; for resource allocation and planning; providing clinical and administrative support to patient medical care and payments for medical care; determining entitlement and eligibility for VA benefits; processing and adjudicating benefit claims by VBA Regional Office (RO) staff; audits, reviews and investigations conducted by staff of the health care facility, the VBA Regional Directors and Division Offices, VA Headquarters, and the VA Office of Inspector General (OIG); law enforcement investigations; and quality assurance audits, reviews and investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 38 U.S.C. 7332 (formerly section 4132), *i.e.*, medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a Routine Use unless there is also specific statutory authority permitting disclosure.

1. Any information in this system, except the name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. The names and addresses of veteran may only be disclosed:

a. To a Federal agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto, in response to its official request.

b. To any foreign, State or local government agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name and address be provided for a purpose authorized by law.

2. A record from this system of records may be disclosed as a ''routine use'' to a Federal, State, or local government agency, or to a non-governmental organization maintaining civil, criminal or other relevant information, such as current licenses, registration or certification, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the use of an individual as a consultant, attending or to provide fee basis health care, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other health, educational or welfare benefits. Any information in this system also may be disclosed to any of the above-listed governmental organizations as part of a series of ongoing computer matches to determine if VA health care practitioners and private practitioners used by the VA hold current, unrestricted licenses, or are currently registered in a State, and are board certified in their specialty, if any. These computer matches are performed pursuant to the VA OIG's authority under Pub. L. 95–452, section 4(a), to detect and prevent fraud and abuse.

3. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. To the Treasury Department to facilitate payments to physicians, clinics, and pharmacies for reimbursement of services rendered.

5. To the Treasury Department to facilitate payments to veterans for reimbursements of travel expenses.

6. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

7. Disclosure may be made to National Archives and Records Administration (NARA), General Services Administration (GSA) in records management inspections conducted under authority of 44 United States Code.

8. Records from this system of records may be disclosed to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the agency to obtain information relevant to an agency decision concerning the hiring, retention or termination of an employee or to inform a Federal agency or licensing boards or the appropriate non-government entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

9. Identifying information in this system, including name, address, social security number and other information as is reasonably necessary to identify such individual, may be disclosed to the National Practitioner Data Bank at the time of hiring and/or clinical privileging/reprivileging of health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/reprivileging, retention or termination of the applicant or employee.

10. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (a) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (b) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or (c) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

11. Relevant identifying and medical treatment information (excluding medical treatment information related to drug or alcohol abuse, infection with the human immunodeficiency virus or sickle cell anemia) may be disclosed to a Federal agency or non-VA health care provider or institution when VA refers a patient for treatment or medical services or authorizes a patient to obtain non-VA medical services and the information is needed by the Federal agency or non-VA institution or provider to perform the services or for VA to obtain sufficient information in order to make payment for the services, to evaluate the services rendered, or to determine the need for additional services.

12. Information maintained in this system concerning non-VA health care institutions and providers, including name, address, social security or employer's taxpayer identification numbers, may be disclosed to the Treasury Department, Internal Revenue Service, to report calendar year earnings of $600 or more for income tax reporting purposes.

13. In order to prevent or identify duplicate payments by Medicare intermediaries, relevant information (excluding medical treatment information related to drug or alcohol abuse, infection with the human immunodeficiency virus or sickle cell anemia) may be disclosed to the Department of Health and Human Services (HHS) for the purpose of identifying individuals who are authorized by VA to obtain non-VA health care services at VA's expense and those for whom payments have been made. The information to be disclosed to HHS includes identifying information (patient and provider names, addresses, social security and taxpayer identification numbers, and date of birth of patient), treatment information (dates and diagnostic, surgical, and services provided codes) and payment information (payee, amounts and dates).

14. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper documents at the health care facilities. Paper payment vouchers are maintained at the health care facility or AAC at Austin, Texas. Information on automated storage media (*e.g.,* microfilm, microfiche, magnetic tape and magnetic disks and laser optical media) is stored at the health care facilities (includes record information stored in the Integrated Hospital System (IHS) at selected medical facilities and at other facilities in the Veterans Integrated Systems and Technology Architecture (VistA) system, and, in most cases, copies of back-up computer files maintained at off-site locations), VA Headquarters, the VA Allocation Resource Center (ARC), the Regional Directors and Division Offices, the OIFOs and the AAC. Reports generated from these records are maintained on paper and microfiche at the health care facilities, VA Headquarters, the Regional Directors and Division Offices, and the AAC.

RETRIEVABILITY:

Information is retrieved by the patient's name and/or social security number and/or the name or social security or taxpayer identification numbers of the non-VA health care institution or provider.

SAFEGUARDS:

1. Access to working spaces and record storage areas in VA health care facilities is restricted to VA employees on a ''need-to-know'' basis. Generally, file areas are locked after normal duty hours and the health care facilities are protected from outside access by the Federal Protective Service or other security personnel. Access to the records is restricted to VA employees who have a need for the information in the performance of their official duties. Employee records or records of public figures or otherwise sensitive records are generally stored in separate locked files. Strict control measures are enforced to ensure that access to and disclosures from these records are limited to a ''need-to-know'' basis.

2. Access to the VistA and IHS computer rooms at health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the VistA and IHS systems may be accessed by authorized VA employees. Access to file information is controlled at two levels: the system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from the AAC and VistA and IHS files and maintained on personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Remote access to file information by staff of the OIFOs, VBA Regional Offices, and access by OIG staff conducting an audit or investigation at the health care facility or an OIG office location remote from the health care facility is controlled in the same manner.

3. Access to the AAC is generally restricted to Center employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Information stored in the computer may be accessed by authorized VA employees at remote locations including VA health care facilities, OIFOs, VA Headquarters, Regional Directors and Division Offices, and OIG headquarters and field staff. Access is controlled by individually unique passwords/codes which must be changed periodically by the employee.

4. Access to records maintained at VA Headquarters, the VA ARC, the OIFOs and the Regional Directors and Division Offices is restricted to VA employees who have a need for the information in the performance of their official duties. Access to information stored on automated storage media is controlled by individually unique passwords/codes. Information stored on computers at the OIFOs may be accessed by authorized VA employees at remote locations including VA health care facilities and Regional Directors and Division Offices. Access is controlled by individually unique passwords/codes. Records are maintained in manned rooms during nonworking hours. The facilities are protected from outside access during working hours by the Federal Protective Service or other security personnel.

5. Information downloaded from VistA and IHS and VA AAC files and maintained by the OIG Headquarters and field offices on automated storage media is secured in storage areas or facilities to which only OIG staff have access. Paper documents are similarly secured. Access to paper documents and information on automated storage media is limited to OIG employees who have a need for the information in the performance of their official duties. Access to information stored on automated storage media is controlled by individually unique passwords/codes.

RETENTION AND DISPOSAL:

Paper documents at the health care facility related to authorizing the fee basis care and the services authorized, billed and paid for are maintained in the Patient Medical Records–VA (24VA136). These records are retained at health care facilities for a minimum of three years after the last episode of care. After the third year of inactivity the paper records are transferred to a records facility for seventy-two (72) more years of storage. Automated storage media and other paper documents that are included in this system of records and not maintained in the Patient Medical Records-VA (24VA136) are retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Health Administration Service (163), VA Headquarters, 810 Vermont Ave., NW., Washington, DC 20420.

NOTIFICATION AND PROCEDURES:

An individual who wishes to determine whether a record is being maintained in this system under the individual's name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA health care facility where care was authorized or rendered. Addresses of VA health care facilities may be found in VA Appendix 1 of the biennial publication. All inquiries must reasonably identify the portion of the fee basis record involved and the place and approximate date that medical care was provided. Inquiries should include the patient's full name, social security number and return address.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of VA fee basis records may write, call or visit the last VA facility where medical care was authorized or provided.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

The patient, family members or accredited representative, and friends, employers or other third parties when otherwise unobtainable from the patient or family; military service departments; private medical facilities and health care professionals; Patient Medical Records-VA (24VA136); other Federal agencies; VA regional offices; VA automated record systems including Individuals Submitting Invoices/Vouchers for Payment-VA (13VA047), Veterans and Beneficiaries Identification and Records Location Subsystem-VA (38VA23) and the Compensation, Pension, Education and Rehabilitation Records-VA (58VA21/22); and various automated systems providing clinical and managerial support at VA health care facilities.

[FR Doc. 02–24391 Filed 9–26–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of Two Systems of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending two systems of records entitled ''Personnel and Accounting Pay System—VA'' (27VA047) and ''General Personnel Records (Title 38)—VA'' (76VA05) by adding a new routine use to each system in order to disclose information as required by law to enroll the children of Federal employees in healthcare benefits coverage and to notify the courts about the coverage.

DATES: If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the amended systems of records are effective October 28, 2002.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed amendment to the systems of records to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or email comments to ''*OGCRegulations@mail.va.gov*''. All relevant material received before October 28, 2002 will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Peter Mulhern, Office of Financial Policy (047GC1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–5570.

SUPPLEMENTARY INFORMATION: Public Law 106–394 (October 30, 2000), 114 Stat. 1629, the ''Federal Employees Health Benefits Children's Equity Act of 2000,'' and 5 U.S.C. 8905(h) mandate that agencies ensure that employees provide healthcare benefit coverage for their children when such employees are required to do so by a court or administrative order. This law simply places Federal employees in the same position as private sector employees in regard to being required to provide healthcare benefits coverage for their dependent children when required by court or administrative order. VA and other Federal agencies are required to enroll employees in the Federal Employees' Health Benefits (FEHB) program if they do not voluntarily enroll or purchase other healthcare benefits coverage. An employee subject to such an order must enroll in self and family coverage in a plan that provides full benefits to his or her child or children in the area where they live or provide documentation that he or she has other healthcare coverage for the children. If the employee does not enroll in an appropriate healthcare plan or provide documentation of other coverage for the children, the agency must enroll the employee for self and family coverage in the standard option of the Blue Cross and Blue Shield Service Benefit Plan (enrollment code 105).

The Office of Personnel Management (OPM) has provided guidance to agencies on implementation of this law in OPM Retirement and Insurance Service Benefits Administration Letters Number 00–224 (November 21, 2000) and Number 01–202 (January 29, 2001), and Retirement and Insurance Service Payroll Office Letter Number P–00–39 (December 14, 2000).

In order to comply with Public Law 106–394 and 5 U.S.C. 8905(h), VA proposes to add a new routine use to 27VA047 and 76VA05. This new routine use will permit disclosure of information to a court, administrative entity, or custodial parent of a child in order to provide documentation of payroll deductions for child healthcare insurance coverage in accordance with a court or administrative order. The routine use also permits disclosure of information from these systems of records to healthcare insurance carriers in order to enroll employees and their children in healthcare insurance plans. VA has determined that the release of information for these purposes is a necessary and proper use of the information in these systems of records and that the new specific routine use for transfer of this information is appropriate.

An altered systems of records report and a copy of the revised systems notice have been sent to the House of Representatives Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) and guidelines issued by OMB (65 FR 77677, (12/12/00)).

Approved: September 11, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

NOTICE OF AMENDMENT TO SYSTEMS OF RECORDS

In the system of records identified as 27VA047, ''Personnel and Accounting Pay System—VA,'' as set forth in the **Federal Register** 40 FR 38095 (8/26/75) and amended in 48 FR 16372 (4/15/83), 50 FR 23009 (5/30/85), 51 FR 6858 (2/26/86), 51 FR 25968 (7/17/86), 55 FR 42534 (10/19/90), 56 FR 23952 (5/24/91), 58 FR 39088 (7/21/93), 58 FR 40852 (7/30/93), 60 FR 35448 (7/7/95), 62 FR 41483 (8/1/97), 62 FR 68362 (12/31/97), 65 FR 20850 (4/18/00), 65 FR 31370 (5/17/00), and 65 FR 44097 (7/17/00) the system is revised as follows:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

34. VA may disclose information from this system of records to a court, administrative entity, or custodial parent of a child in order to provide documentation of payroll deductions for child healthcare insurance coverage in accordance with a court or administrative order as required by 5 U.S.C. 8905(h), as enacted by Public Law 106–394 and in accordance with the procedures stated in the applicable Office of Personnel Management Benefits Administration and Payroll Office Letters. VA may also disclose information from this system of records to healthcare insurance carriers in order to enroll employees and their children in healthcare insurance plans in accordance with Public Law 106–394.

* * * * *

In the system of records identified as 76VA05, ''General Personnel Records

(Title 38)—VA,'' as set forth in the **Federal Register** at 65 FR 45131 (7/20/00), the system is revised as follows:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

39. VA may disclose information from this system of records to a court, administrative entity, or custodial parent of a child in order to provide documentation of payroll deductions for child healthcare insurance coverage in accordance with a court or administrative order as required by 5 U.S.C. 8905(h), as enacted by Public Law 106–394 and in accordance with the procedures stated in the applicable Office of Personnel Management Benefits Administration and Payroll Office Letters. VA may also disclose information from this system of records to healthcare insurance carriers in order to enroll employees and their children in healthcare insurance plans in accordance with Public Law 106–394.

[FR Doc. 02–24392 Filed 9–26–02; 8:45 am]

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Federal Register

Friday,

September 27, 2002

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 392 and 393

Development of a North American Standard for Protection Against Shifting and Falling Cargo; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 392 and 393

[FMCSA Docket No. FMCSA–97–2289]

RIN 2126–AA27

Development of a North American Standard for Protection Against Shifting and Falling Cargo

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA revises its regulations concerning protection against shifting and falling cargo for commercial motor vehicles (CMVs) engaged in interstate commerce. The new cargo securement standards are based on the North American Cargo Securement Standard Model Regulations, reflecting the results of a multi-year comprehensive research program to evaluate current U.S. and Canadian cargo securement regulations; the motor carrier industry's best practices; and recommendations presented during a series of public meetings involving U.S. and Canadian industry experts, Federal, State and Provincial enforcement officials, and other interested parties. The new rules require motor carriers to change the way they use cargo securement devices to prevent articles from shifting on or within, or falling from, CMVs. In some instances, the changes may require motor carriers to increase the number of tiedowns used to secure certain types of cargoes. However, the rule generally does not prohibit the use of tiedowns or cargo securement devices currently in use. Therefore, motor carriers are not required to purchase new cargo securement equipment to comply with the rule. The intent of this rulemaking is to reduce the number of accidents caused by cargo shifting on or within, or falling from, CMVs operating in interstate commerce, and to harmonize to the greatest extent practicable U.S., Canadian, and Mexican cargo securement regulations.

DATES: The rule is effective December 26, 2002. Motor carriers must ensure compliance with the final rule by January 1, 2004. The publications incorporated by reference in this final rule are approved by the Director of the Federal Register as of December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–1790; or Mr. Charles E. Medalen, Office of the Chief Counsel, MC–CC, (202) 366–1354, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1993, the House of Representatives held a hearing concerning the adequacy of Federal regulations on cargo securement, as well as the enforcement of those regulations (''Truck Cargo Securement Regulations and Enforcement, 1993: Hearing Before the Subcommittee on Investigations and Oversight of the House of Representatives' Committee on Public Works and Transportation,'' 103rd Cong., 1st Sess. 32 (1993)). The report of the July 1993 hearing is included in the public docket. The hearing was prompted by several cargo securement accidents that occurred in New York between 1990 and 1993. During the hearing, the Federal Highway Administrator stated that the Ontario Ministry of Transportation had requested that the FHWA review a proposal prepared on behalf of the Canadian Council of Motor Transport Administrators (CCMTA)—a non-profit association of senior officials from Federal, Provincial, and Territorial departments and agencies responsible for the administration, regulation, and control of motor vehicle transportation and highway safety—for a research program to evaluate cargo securement regulations and industry practices. The Administrator informed the subcommittee that the FHWA would participate in the research effort and consider incorporating the results of the research into the FMCSRs.

A cargo securement research working group was organized by the CCMTA and the Ontario Ministry of Transportation to discuss the research methodology with industry groups and Federal, State, and Provincial governments from the United States and Canada. The working group, which included representatives from the FHWA, Transport Canada (the Federal department responsible for developing and enforcing the regulatory aspects of motor vehicle and motor carrier safety in Canada), the CCMTA, the Commercial Vehicle Safety Alliance (CVSA), several States and Provinces, and U.S. and Canadian industry, held its first meeting August 16–17, 1993. The cargo securement issues that were to be examined through the research program and the selected research methodology are described in a report published by the Ontario Ministry of Transportation in November of 1993. A copy of the minutes of the first meeting and a copy of the report entitled ''A Proposal for Research to Provide a Technical Basis for a Revised National Standard on Load Security for Heavy Trucks'' are included in the public docket.

The North American Load Security Research Project was initiated to develop an understanding of the mechanics of cargo securement on heavy trucks. The research was intended to provide a sound technical basis for development of the North American Cargo Securement Standard Model Regulations. Tests were conducted to examine the fundamental issues of anchor points, tiedowns, blocking and friction, and issues related to securement of dressed lumber (representative of cargoes that are loaded lengthwise on a vehicle and secured with transverse tiedowns), large metal coils, concrete pipe, intermodal containers, and other commodities. A copy of the research reports is in the public docket. Copies of these reports may be purchased from the CCMTA, 2323 St. Laurent Boulevard, Ottawa, Ontario K1G 4J8. The telephone number for the CCMTA is 613–736–1003; the Web site address is *http://www.ab.org/ccmta/ccmta.html.*

As various portions of the research were completed, the results were provided to the Standard Drafting Group which was responsible for leading the effort at drafting the North American Model Regulations. Almost all of the research was completed by late 1997, with a few remaining items completed in 1998. The drafting group was responsible for reviewing the draft research reports to determine how the information could best be used to improve specific cargo securement requirements in the U.S., Canada, and Mexico.

Process for Development of the North American Model Regulations

The Standard Drafting Group developed the outline for the model regulations with most of the detailed performance criteria added as the research reports were completed. Membership in the drafting group included representatives from the FHWA, Transport Canada, CCMTA, the Ontario Ministry of Transportation, Quebec Ministry of Transportation—Ontario and Quebec conducted most of the research—and the CVSA. The CVSA was included in the drafting group because it is an organization of Federal, State, and Provincial government

agencies and representatives from private industry in the United States, Canada, and Mexico dedicated to improvement of commercial vehicle safety. The membership of the drafting group was limited because there was an informal agreement among the interested parties that it would have been impractical to draft a technical document with a larger number of participants.

The process used for further developing this outline for the model regulations involved the North American Cargo Securement Harmonization Committee, a group that reviewed major portions of this outline as it was completed by the drafting group. Membership in the harmonization group was open to all interested parties in the U.S., Canada, and Mexico. This process was intended to ensure that all interested parties had an opportunity to participate in the development of the model regulations, and to identify and consider the concerns of the Federal, State, and Provincial governments, carriers, shippers, industry groups, and associations, as well as safety advocacy groups and the general public. The harmonization group held public meetings at locations in the United States and Canada, during which drafts of the North American Cargo Securement Standard were presented for review and comment. Representatives of the CCMTA and the CVSA served as co-chairpersons for the harmonization group and organized the public meetings. The meetings held in the U.S. concerning the review of substantive material that would be included in the model regulations were announced by the FHWA in the **Federal Register**. There were nine meetings held in the U.S. and Canada. Copies of the minutes from the meetings, including lists of the agencies, organizations and companies represented at the meetings, are in the public docket.

For individuals and groups unable to attend the meetings, the CCMTA posted information on the Internet. The Internet address is *http://www.ab.org/ccmta/ccmta.html.* Individuals and organizations with Internet electronic mail addresses were provided with the opportunity to have their names added to an electronic mailing list to receive information on the development of the standard.

After all interested parties were given the opportunity to comment and their concerns had been considered, the final version of the North American Cargo Securement Standard was published in May 1999 by the CCMTA. A copy of the standard is in the public docket. Federal, State, and Provincial governments throughout North America have now been encouraged to adopt it through their respective rulemaking processes.

Publication of Advance Notice of Proposed Rulemaking

On October 17, 1996 (61 FR 54142), the FHWA published an advance notice of proposed rulemaking (ANPRM) concerning the development of the North American Cargo Securement Standard Model Regulations. The agency requested comments on its consideration of a rulemaking to overhaul the Federal cargo securement regulations based on the research program described above and other published cargo-securement related research, such as Southern Illinois University's March 1995 report entitled ''Analysis of Rules and Regulations for Steel Coil Truck Transport.'' A copy of this report is included in the public docket. The agency also requested comments on the process that would be used to develop the North American Cargo Securement Standard Model Regulations.

Generally, the commenters agreed with the agency's plan to participate in the research program to evaluate cargo securement systems, and the approach the agency described for developing the North American Cargo Securement Standard Model Regulations. However, some of the commenters expressed concerns about specific issues they believe were not discussed adequately in the research and standards development program described in the ANPRM.

Publication of NPRM

On December 18, 2000, the agency published a notice of proposed rulemaking (NPRM) to adopt rules based on the North American Cargo Securement Standard Model Regulations (65 FR 79050). The NPRM requested comments on all aspects of the rulemaking.

Discussion of Comments to the NPRM

The agency received 102 comments in response to the NPRM. The commenters included individuals concerned about highway safety, truck drivers, motor carriers, motor carrier associations, manufacturers and shippers of products transported on trucks, truck trailer manufacturers, manufacturers of devices used to secure articles of cargo on commercial motor vehicles and several associations representing such manufacturers, and safety advocacy groups.

Generally, the majority of the commenters supported the concept of adopting the North American Cargo Securement Standard Model Regulations. However, almost all of the commenters suggested revisions of some of the requirements to make the proposed rule more consistent with the model regulations, and to improve the clarity of the requirements. A number of the commenters had objections to certain provisions of the model regulations that were proposed for adoption, suggesting that their concerns were not adequately addressed during the public meeting process used for developing the model regulations. The major issues are addressed below.

Applicability of Cargo Securement Rules

Several commenters expressed concerns about the applicability of the cargo securement rules to commercial motor vehicles with a gross vehicle weight less than 26,000 pounds. The National Association of Trailer Manufacturers stated:

> Our association is dedicated to promoting safety in trailers under 26,000 lbs GVWR [gross vehicle weight rating]. We focus on that segment of the trailer industry. We have observed repeatedly that regulations are written based on experiences of tractor-trailer rigs—the big ones—all over 26,000 lbs GVWR—and then are automatically applied to the much smaller and much different trailers.
>
> We respectfully submit that the major differences of frame structure, platform height, axle placements and towing methods are significant and they do affect handling, loading, and safety characteristics of these trailers.
>
> Therefore, our general concern and fear is that regulations are developed and applied to our segment of the industry without considering their real needs, designs and ultimate impact on manufacturing costs.
>
> We suggest that the rulemaking in this case of cargo securement be applied only to those trailers (over 26,000 lbs GVWR) where they are needed.

United Parcel Service, Inc. (UPS) also believes that there is insufficient data concerning the securement of cargo transported in vehicles with a GVWR greater than 10,001 pounds but substantially less than 26,001 pounds, the weight typically associated with a heavy vehicle. UPS does not believe that FMCSA has investigated the mechanical differences between such vehicles and heavy trucks, and argues that the agency has made no effort to determine the propriety of applying performance criteria and other standards developed for flatbed and other heavy trucks to UPS package cars, trailers, or other similar vehicles designed for the

handling of smaller package-type cargo within completely contained CMVs.

The Manufactured Housing Institute (MHI) expressed concern about whether the rules would be applicable to the transportation of manufactured homes. MHI stated that various types of materials and supplies are shipped within the transportable sections of manufactured homes from the point of manufacture to the retailer and/or home site, where installation crews set up the homes. The materials and supplies are used to complete the home and include carpeting, vinyl siding, roofing materials, and interior wall and ceiling materials. MHI also stated that the materials and supplies are spread out over several rooms, and often placed within closets, utility rooms, and/or other confined spaces within each transportable section of manufactured housing. MHI requested that manufactured homes be excluded from the applicability of the cargo securement rules.

FMCSA Response

The FMCSA believes the applicability of the new cargo securement rules should be consistent with the applicability of the current cargo securement regulations. The agency's cargo securement rules have historically been applicable to the full range of cargo-carrying commercial vehicles subject to the FMCSRs since the safety regulations were first issued more than 60 years ago. The new rules should also be applicable to all cargo-carrying, commercial motor vehicles (as defined in 49 CFR 390.5). None of the commenters have presented information to support making a distinction between the general applicability of the FMCSRs, and the applicability of the cargo securement rules. There is no readily apparent reason why any particular class or category of cargo-carrying vehicle subject to the FMCSRs, should be excepted from basic requirements to ensure that the cargo is secured to prevent it from falling from the vehicle, or shifting to the extent that the vehicle's stability or maneuverability is adversely affected.

We agree with commenters' assertions that there are differences in frame structure, platform height, axle placements and towing methods. However, there is no data to suggest that differences in the design of the commercial motor vehicle, or the manner in which it is towed (*e.g.*, a fifth wheel coupling device for truck trailers, versus a ball-and-socket arrangement for small trailers) negate the need for ensuring that cargo is properly secured to prevent accidents. The agency does not believe that the rules being adopted represent a one-size-fits-all approach to ensuring safety. The rules are performance-based to the greatest extent practicable resulting in requirements that increase with the size of the articles of cargo, or the complexity of the load securement system necessary to ensure that the articles are properly secured.

With regard to MHI's concerns about the rules being applicable to manufactured homes, transporters of the homes would comply by ensuring that materials and supplies used to complete the home, are positioned so that they cannot shift around inside the home while it is being towed to its installation site. Placing the items within closets and utility rooms or other confined spaces generally would satisfy the new requirements under § 393.102.

Relationship Between FMCSA's and RSPA's Cargo Securement Rules

The Georgia Public Service Commission (Georgia PSC) recommended that FMCSA should reference provisions of the Research and Special Programs Administration's (RSPA) load securement rules for hazardous materials transported by highway [Subpart B of 49 CFR part 177]. Georgia PSC indicated that the hazardous materials regulations do not contain load securement requirements for Class 9 materials and combustible liquids. These materials may be transported in non-specification packaging (*i.e.*, packaging that is not required to meet RSPA performance standards). In addition, the transportation of limited quantities is not specifically covered by load securement provision of the hazardous materials regulations.

FMCSA Response

The FMCSA does not believe it is necessary to include a reference to the hazardous materials regulations. The cargo securement rules being adopted are applicable to any articles of cargo being transported in or on a commercial motor vehicle, regardless of whether the transportation of the articles is subject to the hazardous materials regulations. The agency has contacted RSPA to discuss this matter does not believe the hazardous materials rules prevent motor carriers from complying with the FMCSA's cargo securement rules, or vice versa. The FMCSA's and RSPA's rules are complementary and motor carriers transporting hazardous materials must ensure compliance with both agencies' rules, whenever applicable.

Performance Criteria for Cargo Securement Systems

International Paper Company was among the numerous commenters that expressed concerns about the proposed minimum performance criteria for cargo securement devices and systems. International does not believe the deceleration values can be achieved under actual test conditions with loaded vehicles. They believe the values were based on researchers' analysis rather than the results of actual vehicle tests. International believes that minimum performance criteria of 0.6g forward, 0.35g lateral and 0.25g rearward have been proven in real-world testing and should be adopted.

The American Trucking Associations, Inc. (ATA), however, believes the proposed performance criteria are appropriate. The ATA stated:

> For many years a 0.6g deceleration was the best that could be attained. However, today's truck tires and brakes are more capable than ever before. In discussions with tire, brake and vehicle manufacturers there was agreement that the g forces defined in the proposal are now achievable. While these forces will rarely reach the 0.8g forward, 0.5g rearward and 0.5g lateral values, they can be achieved and so should be expected under certain non-crash conditions. Therefore we accept the new values.

The Advocates for Highway and Auto Safety (Advocates) believes the performance criteria are inadequate. Advocates stated:

> These proposed limits accord with recognized commercial vehicle operating tolerances for deceleration and acceleration generally without a driver losing control of a truck and subsequently rolling over, yawing, or jackknifing. However, they do not entail a severe demand on cargo securement in severe maneuvers or in minor crashes involving forces exceeding these ceilings.
>
> The FMCSA states in this proposed rule that it will not adopt performance standards ensuring that cargo is retained on or in the commercial vehicle in collisions, rollovers, or trailer detachments. *Id.* It is noteworthy that, although the agency asserts that ''shifting or falling cargo is a contributing factor in less than one percent of the accidents self-reported by motor carriers,'' it only states without corroborating figures that ''there is no evidence that a significant number of secondary injuries or fatalities are caused by the impact of cargo thrown from a CMV as the result of an accident, as opposed to the impact of the CMV itself with the roadway, nearby objects or other vehicles.'' *Id.* At 79053, 79054. The FMCSA cannot fulfill its obligation to provide a documented administrative record in this rulemaking by making this kind of summary dismissal of the crash consequences of dislodged cargo. Many anecdotal reports, including newspaper accounts, of crashes involving deaths and injuries as a result of cargo detachment have been made over the

years which verify that some of these losses occurred from the separation of freight from commercial motor vehicles as the result of severe maneuvers resulting in a collision with other vehicles, impacts with fixed object hazards, or rollovers. Advocates continues to believe that the agency has an obligation to establish standards which ensure the crashworthiness of cargo securement methods in most collisions or rollovers.

FMCSA Response

The FMCSA believes the proposed performance criteria are appropriate for adoption in the final rule. The agency agrees with the ATA that commercial motor vehicles are now capable of achieving the types of accelerations and decelerations that are being adopted as performance criteria. While it is true that not every commercial motor vehicle on the road today is capable of achieving such levels of performance, there is no practical way to ensure that all loads are adequately secured unless the rule includes performance criteria that reflect the latest developments in vehicle design. Neither motor carriers nor enforcement officials will be able to determine vehicle performance capabilities. Therefore, rather than adopt a rule with multiple sets of performance standards to cover a variety of vehicle types and configurations, the agency is adopting a single set of performance standards that would ensure that all loads are properly secured, regardless of the stopping capability or maneuverability of the vehicle.

The FMCSA disagrees with the Advocates' argument about the need for ensuring crashworthiness of cargo securement systems. FMCSA finds that there is no evidence that a significant number of secondary injuries or fatalities are caused by cargo thrown from a CMV after a collision. We recognize that there are anecdotal reports and newspaper accounts of crashes involving deaths and injuries as a result of cargo separating from a commercial motor vehicle after a collision with fixed objects or rollovers. However, a rulemaking to establish crashworthiness standards requires much more justification than anecdotal reports and newspaper articles.

The agency would have to identify the types of collisions or rollovers the rulemaking would address, the forces most likely to act on the articles of cargo during these collisions and rollovers, and the type of cargo securement systems necessary to prevent the cargo from separating from the vehicle. The effort required to undertake such a rulemaking would be costly and require a substantial amount of time to complete crash testing necessary to demonstrate the adequacy of the securement systems for the various scenarios. To undertake such a program with nothing more than anecdotal information as the justification would be inappropriate.

We continue to believe that there is no practical way to ensure that all loads are secured to prevent separation from the vehicle after there is a collision or rollover. The more practical approach for ensuring highway safety is to focus on crash avoidance-type cargo securement rules, rather than crashworthiness cargo securement standards.

Securement of Articles of Cargo in Van-Type Trailers

Numerous commenters expressed concerns about the applicability of the proposed rules to articles of cargo transported in van-type trailers. The American Forest and Paper Association stated:

The [preamble to the NPRM] states, ''* * *. In the case of van type trailers, the problem is that some motor carriers do not use any securement devices to prevent loads from shifting.'' We believe that this is a factual statement, however, it can be misleading. There are many loads that can be safely transported in a van type vehicle, using correct loading patterns, that require no additional forms of securement that meet the G-force requirements, excepting the rearward requirement which is overly restrictive. The loads that can be loaded, such that they prevent movement to the extent that affects the vehicle's stability and will not fall off of or out of the vehicle, are safe.

Weyerhaeuser stated:

[T]he sections of the proposed standard that cover general cargo (§ 393.100 through 393.120) are confusing and far removed from the principles of the Model Regulation. These sections appear to require tiedowns for cargo transported in sided vehicles at all times. Cargo that will not fall from or out of a vehicle and cargo that will not shift to the extent that the vehicle's stability is adversely affected should not be subject to the requirements concerning tiedowns or other additional securement. The confusion in these proposed rules could lead to needless litigation based on the confusion and misinterpretation of the rules by shippers, carriers and enforcement agencies.

FMCSA Response

The FMCSA agrees with commenters that there are many loads that can be safely transported in a van type vehicle, using correct loading patterns, without any additional forms of securement. The agency never intended that the cargo securement rules require tiedowns on all articles of cargo transported in van-type trailers, regardless of the type of cargo and loading arrangement. We have made revisions to the proposed language in response to the commenters to improve the clarity of the rule, and to make the final rule more consistent with the model regulations. The new regulatory language in § 393.106 will ensure a performance-based approach to securing articles of cargo in van-type trailers.

Making a Distinction Between Direct and Indirect Tiedowns

Many of commenters indicated that the proposed distinction between direct and indirect tiedowns would cause confusion if adopted in the final rule. The Commercial Vehicle Safety Alliance stated:

It is evident to the [CVSA] that, while there is a sound technical basis for drawing the distinction, there are grave concerns with [the] prospect of introducing this concept in regulation. There is a great deal of confusion with the distinction, in spite of the definitions included in the NPRM. Of particular concern is the prospect of ensuring that the calculation of aggregate working load limit of securement systems is carried out easily and consistently by carriers and enforcement officials.

Advocates stated:

[We] cannot conclusively distinguish between direct and indirect tiedowns, nor between exactly which parts of a direct tiedown are governed by one-half its working load or by its full working load. Although we can envision an indirect tiedown whose character appears to apply essentially constraining vertical forces on a piece of cargo against the floor of the vehicle, it is far less clear when a tiedown can or cannot be regarded as a ''direct'' tiedown or which parts are governed by full working load limits and which by one-half working load limits. Advocates is convinced that many carriers and drivers will fail to understand the distinctions drawn by the agency concerning tiedowns and will inappropriately judge a tiedown as ''direct'' when in fact it is an indirect tiedown, or will misjudge the working load limits applying to the different parts of a direct tiedown, resulting in securement which does not meet the standard and poses an unacceptable safety risk of dislodgement. As a result, the calculations which the agency wants carriers to apply in judging whether the requirements of the proposed regulation have been met, will be uncertain and often mistaken. The FMCSA needs to evaluate its descriptions of the different species of tiedowns and perhaps provide clearer text accompanied by illustrative examples of the most common ways in which tiedowns are direct and indirect, and provide guidance on how carriers and drivers can distinguish between the different parts of direct tiedowns with respect to working load limits.

FMCSA Response

The FMCSA agrees with the commenters concerns about making the

distinction between direct and indirect tiedowns. While there may be safety benefits to adopting a final rule that makes such a distinction, there are also safety risks associated with motor carriers, drivers, and enforcement officials not fully understanding the difference between the two types of tiedowns, and underestimating the aggregate working load limit necessary to prevent the shifting or falling of cargo. The current requirement that the aggregate working load limit of any securement systems used to restrain an article or group of articles be at least one-half times the weight of the article will remain in place. However, the new rule explains in greater detail how the working load limits of the individual tiedown devices are added together to determine the aggregate working load limit, and to account for each associated connector or attachment mechanism, and for each section of a tiedown that is attached to an anchor point.

Marking and Rating of Tiedowns and Anchor Points

Mr. John R. Billing, one of the members of the group that drafted the model regulations, commented on the agency's decision not to prohibit the use of unmarked tiedowns at this time. Mr. Billing stated:

> One of the objectives of the standard is to ensure that shippers, carriers and drivers use the proper tools and techniques to secure cargo. When it comes to heavy specialized loads, like logs, metal coils, billets or plate, concrete pipe, and others, there should be no room for doubt about the capacity of the tools or the reliability of the techniques. Most carriers who move such commodities on a daily basis [use] marked tiedowns and trailers designed for the loads they carry. Prohibiting use of unmarked tiedowns will not affect them. It will affect the driver who tries to take such a load, and has neither the experience nor the proper equipment. An objective of the standard is to try to prevent the inexperienced and under-equipped from doing things they should not be attempting.

On the subject of trailer anchor points, Mr. Billing stated:

> This issue is really the same issue as allowing use of unmarked chain. If a trailer will carry a serious load, secured by marked chain of serious capacity, then the anchor points need to be strong enough to resist the loads that the chain will apply to them.

The ATA indicated that it agrees with the concept of having unmarked tiedowns considered as having a working load limit equal to the lowest rating for their type of material, as listed in the table of working load limits included in the rule. The ATA stated:

> Ultimately, when all manufacturers mark their products with their working load limit it will be possible to prohibit unmarked tiedown devices. The possibility of doing this will arise several years after the proposed rule goes into effect and manufacturers and consumers realize the benefits of making and using marked products.

Keen Transport, Inc. expressed concern about the potential impact the rules would have on motor carriers if FMCSA prohibited the use of unmarked tiedowns and required rating and marking of anchor points on CMVs.

FMCSA Response

We agree with the principle that it is important to ensure that shippers, carriers and drivers use the proper tools and techniques to secure cargo. However, safety-conscious motor carriers and drivers could achieve compliance with the rules being adopted, and make wise choices about cargo securement devices, without the mandatory marking and labeling of tiedowns and anchor points.

We acknowledge that if unmarked tiedowns of varying grades are readily available, motor carriers could unknowingly violate the current rule and the new rule by failing to have an adequate number of securement devices. The consequences for a load such as metal coils could be fatal to other motorists. While the risks of such an accident could be greatly minimized by prohibiting motor carriers from using unmarked tiedowns, there is insufficient information to support such a requirement at this time.

We continue to believe that before initiating a rulemaking to prohibit the use of unmarked/unrated cargo securement devices, we would have to quantify the potential economic burden on the motor carrier industry and those involved with the manufacture, sale, and distribution of unmarked securement devices. Since we have no reliable information on the number of manufacturers, distributors, and retailers of unmarked tiedowns, the quality or strength of such devices, or the amount of these tiedowns currently in use by motor carriers and in retailers' stock, it would be inappropriate to propose a prohibition at this time. None of the commenters favoring a prohibition on unmarked tiedowns provided information to support the need for such a rulemaking.

With regard to the specific issue of anchor points on semitrailers and trailers, we continue to believe that it is not appropriate to establish such requirements at this time. Although the Truck Trailer Manufacturers Association (TTMA) has established a recommended practice, ''RP 47–99, Testing, Rating, and Labeling Platform and Van Trailers for Cargo Securement Capability'' June 1, 1999, concerning test procedures and general performance specifications for tiedown anchor points, front-end structures, and sidewall structures, the FMCSA still does not have any information on the extent to which trailer manufacturers follow these recommendations. If we determine that a significant percentage of manufacturers follow the recommended practices, the agency will consider a rulemaking to incorporate by reference the TTMA's recommended practice. The requirement would then apply to trailers manufactured on or after the effective date of the final rule. We are taking this cautious approach because we must be certain that newly manufactured trailers satisfy the guidelines in the recommended practice and that motor carriers would not be prohibited from using suitable semitrailers and trailers solely on the basis that the vehicle lacked a rating and marking of the anchor points.

Based on the anecdotal information available to date, the vast majority of cargo-securement related accidents do not involve problems with the anchor points. The majority of these accidents appear to involve an inadequate number of tiedown devices, improper placement of the tiedowns, or other factors unrelated to the design or performance capability of the anchor points. Therefore, we continue to believe that our focus should remain on the actual tiedowns and the way motor carriers use such devices to secure articles of cargo, rather than on vehicle-based anchor points.

Responsibilities for Securement of the Contents of Intermodal Containers

A number of commenters discussed the difficulties that motor carriers would have if the cargo securement rules required the motor carrier to ensure that the contents of the intermodal container were properly secured, regardless of the entity that loaded the container. The ATA stated:

> It is illegal for a motor carrier or driver to tamper with a seal on an intermodal cargo container that has not been cleared by the United States Customs [Service]. Many motor carriers are Customs bonded to receive containers of cargo that have not yet been approved by agents of the U.S. Customs [Service]. Customs-bonded motor carriers are responsible for:
>
> • Affixing the red Customs warning cards at the access points of conveyances (typically vehicle, including intermodal container, doors) (the red cards are in addition to the existing seal(s)); and
>
> • Assuring the integrity of the seal and the ''sanitary'' condition of the cargo until

Customs clears its status for delivery to the consignee.

It is not uncommon for intermodal containers of Customs bonded cargo to either travel hundreds of miles or be stored in the motor carrier's secured facilities before being cleared by Customs. During this period, any removal or tampering with the seal(s) or cards violates U.S. Customs regulations and is punishable by two years imprisonment and/or a $5,000 fine. Customs regulations do not permit breaking seals to double-check the loading party's work. The only regulatory exception is in the case of ''* * * a real emergency.''

The United States Maritime Alliance Limited and the Carriers Container Council, Inc. jointly submitted comments. They stated:

While the proposed regulations recognize that commercial motor vehicle (''CMV'') drivers do not have the ability to inspect sealed containers, it fails to recognize that similarly ocean carriers and marine terminal operators are not able to inspect cargo transported in sealed containers. This is a significant omission because it indicates that the drafters are not considering a global view of intermodal transportation but instead are taking a narrow view of the system. Moreover, the exemption for CMV drivers provided under § 392.9(b)(4) could be viewed as placing a burden on ocean carriers or marine terminal operators to perform these inspections prior to tendering the container to a motor carrier. The proposed regulations are deficient in providing the same type of unequivocal exemption for ocean carriers and marine terminal operators.

Advocates believes it is inappropriate to exempt drivers from inspecting the cargo securement of freight carried in sealed containers, freight which the driver is not allowed to inspect, or freight ''loaded in a manner that makes inspection of the cargo impracticable.'' 65 FR 79055. Advocates stated:

These exemptions will easily become major loopholes for consignors, brokers, freight forwarders, and motor carriers which will undoubtedly be exploited especially for legal defense of suits resulting from crashes with deaths, injuries, and property damage losses as the direct result of dislodged cargo. The provision provides ample opportunities for the different parties in the supply chain to attempt to shift burdens of responsibility for cargo securement and any subsequent failures.

FMCSA Response

The FMCSA recognizes the concerns commenters have about the inspection of cargo in intermodal containers. However, the new cargo securement rules would place no greater responsibility on motor carriers and drivers than the current rules. Neither the current rules nor the rules being adopted today include a requirement that drivers inspect all loads in intermodal containers. Drivers are only required to inspect loads when practicable. If the driver has the opportunity to check the securement of the load (for example, the driver is present while the container is being loaded) then there is no readily apparent reason why the motor carrier and driver should not be held accountable for the securement of the load. On the other hand, if there was no practicable opportunity to inspect the cargo securement system because the container was sealed by the shipper with strict instructions to the carrier not to open the container, then the exception under § 392.9(b)(4) would be applicable, and the driver would not be required to inspect the cargo securement system.

The FMCSA encourages U.S-based motor carriers to work with domestic and international shippers to ensure that loads are properly secured. Regardless of whether the FMCSRs are applicable to shippers, they have a role in ensuring highway safety when they load containers for transport on the highway, and seal the containers, for whatever reason.

Periodic Inspection of Cargo Securement Systems by Driver

The California Trucking Association (CTA) recommends that the requirement for drivers to stop and inspect the articles of cargo and the securement devices be revised to be product-specific. The CTA believes that each motor carrier should develop a policy to govern load securement and inspection procedures based on their knowledge and expertise in transporting various commodities. The written policy would then be made available to enforcement personnel during a compliance review.

The Maryland Department of Transportation (MDOT) opposed increasing the mileage at which a driver must inspect the load after beginning a trip from 25 miles to 50 miles. MDOT indicated that there have been a number of incidents where the load came loose and caused traffic tie-ups and in some cases collisions which have resulted in serious injury or death.

Mr. Gary Volkman disagreed with the requirement for en route inspections of the cargo securement system. Mr. Volkman stated:

Consider that currently the hazardous materials regulations already have a rule that every 2 hours or 100 miles the driver of a placarded load must stop and do a tire check. Why would we confuse the issues in a different regulation that will require the driver to stop in the first 50 miles and conduct a tie down inspection? As a dry van carrier it is entirely feasible that we may have a situation wherein we provide transportation for a partial load of metal coils (eye vertical) and hazardous materials that require placards. Which rule should we follow? Or, would we stop every 50 miles for the entire trip?

FMCSA Response

The FMCSA disagrees with the commenters' views about the periodic inspection of the cargo securement system. We continue to believe that it is necessary for drivers to inspect cargo securement systems because the amount of tension in the tiedowns assemblies may decrease significantly after the driver begins operating the vehicle. Vibrations may cause the articles of cargo to shift slightly such that the tiedowns need to be readjusted to ensure that the articles do not fall from the vehicle, or shift to the extent that the vehicle's stability is adversely affected. We do not have sufficient information to develop a periodic inspection standard that is commodity-specific as one commenter suggested, but there is sufficient basis for retaining a general rule for all drivers to periodically check the condition of the cargo securement system.

With regard to comments about the frequency of periodic inspections, we recognize the differences between the minimum requirements for checking the condition of the cargo securement system, and checking the tires in accordance with § 397.17. The differences, however, do not prevent drivers and motor carriers from complying with either the cargo securement rules, or the tire inspection rule.

On July 16, 2002 (67 FR 46624), the agency proposed eliminating the requirement for periodic tire checks. The agency proposed that tires be checked at the beginning of each trip and each time the vehicle is parked. If the proposal is adopted as a final rule, the differences between the inspection intervals would be a moot issue.

With regard to checking the cargo securement system, we are providing drivers with three options: whenever the driver makes a change in the duty status; or after the vehicle has been driven for 3 hours; or after the vehicle has been driven for 150 miles, whichever occurs first. Pending the completion of the rulemaking cited above, § 397.17 currently requires drivers of motor vehicles transporting hazardous material, and equipped with dual tires on any axle, to stop the vehicle at least once every 2 hours or 100 miles of travel, whichever occurs first, to inspect the tires. It is clear that § 397.17 requires more frequent stops to ensure the proper operating condition of

the tires. It is also clear that stopping more frequently than the intervals prescribed by § 392.9 is not prohibited. Therefore, for drivers transporting hazardous materials, compliance with §§ 392.9 and 397.17 could be achieved by simply following the intervals specified in § 397.17. We do not believe it is necessary that both rules use the same intervals.

In response to MDOT, the proposal to change the initial en route inspection from 25 miles to 50 miles is based on the model regulation developed by the harmonization committee and discussed in the public meetings described above. Given the extensive knowledge and experience of the government and industry representatives, we believe it is appropriate to adopt the 50-mile criterion. In doing so, we are allowing drivers the flexibility to perform the initial en route inspection within the first 25 miles after beginning a trip, or if the driver believes it is more appropriate based on the nature of the articles of cargo and the condition of the roads, to inspect the cargo within the first 50 miles after beginning a trip. We are not aware of any data or information that would suggest that allowing up to 25 additional miles for the first en route inspection would reduce the level of safety of operation of commercial motor vehicles.

Special Rule for Special Purpose Vehicles

Silk Road Transport indicated that the current cargo securement rules provide an option for achieving proper securement by means other than those specified in the rules. Silk Road Transport believes proposed rules should be revised to include the same level of flexibility for unique cargo such as railcars, airplane wings, and other unique cargo.

FMCSA Response

We agree with Silk Road Transport's comments. The final rule retains what is currently codified under § 393.100(d), the special rule for special-purpose vehicles, in § 393.110(e).

We have always understood that there are articles of cargo that require special means of loading onto commercial motor vehicles and recognized that the general cargo securement rules may not be appropriate when applied to the securement systems used for these articles. In many cases, if the general rules are applied to these loads, the articles of cargo may be damaged during transport to the extent that they could no longer be used for their intended purposes. Motor carriers are capable of ensuring that specialty articles, such as those described by Silk Road Transport, are adequately secured in a manner consistent with the performance requirements of this rule, without being subjected to detailed rules that could result in damage to the cargo. The rules have allowed motor carriers flexibility for special-purpose vehicles for many years and there is no readily apparent reason to believe that the safety of operation of commercial motor vehicles would be reduced if we continue to allow the flexibility for special-purpose vehicles.

National Association of Chain Manufacturers' (NACM) Publication

The ATA believes the NACM is inconsistent in its use of safety factors. The ATA indicated that grade 4 chain has a safety factor of 3 (the ratio of the breaking strength to the working load limit is 3) but grades 7, 8, and 10 have a safety factor of 4. The ATA stated:

> Past regulatory practice and industry experience show that, employed in conjunction with the stipulations in the FMCSRs, a safety factor of 3 is appropriate for chain that is used to secure cargo. Currently Grade 4 chain and webbing both use a safety factor of 3. So, the assumption made to ensure that changing from a rule based on static breaking strength to one based on working load limit would not require more tie-downs, succeeded for them. However, as noted, NACM assigns chain grades 7, 8, and 10 a safety factor of 4. Hence these products are now penalized in that they can not be employed as they were prior to 1993, when all chain used for load securement was selected on the basis of its static breaking strength.

The ATA recommends that all load securement chain be assigned a safety factor of three.

The ATA believes this would keep the rule from being overly conservative and avoid penalizing motor carriers for using a superior product.

The Specialized Carriers and Rigging Association (SC&RA) also expressed concerns about the NACM's safety factors. SC&RA indicated that it joined the ATA in requesting the NACM change to a cargo securement safety factor of 3, but the NACM rejected the request for fear of confusion caused by having one safety factor for loading and another for lifting.

FMCSA Response

The FMCSA appreciates the concerns commenters expressed about NACM's safety factors for determining working load limits for various grades of chain. However, the agency does not believe this rulemaking is the forum for resolving the issue.

The agency first adopted the use of working load limits on July 6, 1994 (59 FR 34712). The final rule incorporated by reference the NACM's specifications. There appeared to be support for relying on the NACM's expertise in establishing minimum working load limits for chain that meets the association's manufacturing specifications. There is no indication from the commenters that the technical expertise represented by the association's publication is any less credible than it was in 1994.

We believe it is appropriate to defer judgment about working load limits for chains to reputable chain manufacturers and their association. While the NACM's rationale for using different safety factors for different grades of chain is not entirely clear, the level of knowledge and expertise represented by the association is such that the agency would rather adopt their working load limits, even if they may appear to be overly conservative. There is no indication that adopting the NACM's most recent working load limits would have an adverse impact on safety, or result in unnecessarily burdensome requirements when incorporated by reference.

The agency encourages all interested parties to continue dialogue with the NACM to achieve a common understanding of the working load limits necessary for ensuring highway safety. If the dialogue results in the NACM revising its safety factors, the FMCSA will consider incorporating by reference the new NACM publication.

Logs

Several commenters specializing in the transportation of logs expressed concern that the proposed applicability statement for the rules concerning the securement of logs was inconsistent with the model regulations. The commenters also identified regulatory language in the applicability paragraph that was no longer necessary if the agency made the requirements more consistent with the model regulation. Specifically, the commenters indicated that the applicability paragraph in the model regulations included an exception for logs that are unitized by banding or other comparable means. However, the agency's proposal would have imposed the requirements on banded loads rather than to allow them to be transported under the general rules for securement.

The commenters indicated that the statement about the rules applying to ''all other logs'' and the sentence explaining that a load comprised of shortwood and longwood must be treated as shortwood were unnecessary.

FMCSA Response

The FMCSA agrees with the commenters. After carefully reviewing the model regulations, the agency recognizes the inconsistency between its NPRM and the model standards. The regulatory language for the final rule has been revised accordingly.

Concrete Pipe

The SC&RA and the American Concrete Pipe Association (ACPA) expressed concern about the proposed requirement that two longitudinal cables (running from the front of the trailer to the rear of the trailer) be used on certain loads of concrete pipe. The SCRA stated:

> Current practices within the industry have proven to be safe and effective for the last 45 years. These practices typically include a single 2 speed winch mounted to a heavy duty stand in the front of the trailer. On the winch a [½-inch] cable goes over the load and attaches to the bed of the rear of the trailer. After the cable is in place over the load and tightened, the low gear side of the winch is engaged. This process not only forces downward pressure on the bed but it also forces the pipe together. The end result is a tighter bundle of product on the trailer bed. This method has been demonstrated to the enforcement community and has been deemed to be a safe and practical means of transporting pipe. SC&RA proposes flexibility in this area that would either require two [⅜-inch] cables or a single [½-inch] cable with a [two-speed] winch mount.

FMCSA Response

We agree with the comments from ACPA and SC& RA. The most important aspect of the requirement for the longitudinal tiedown is the working load limit. Either one ½-inch, or two ⅜-inch cables or chains with the appropriate working load limit(s) would ensure safety. We believe it is possible to allow flexibility without reducing safety so the final rule provides increased flexibility for longitudinal tiedowns.

Flattened Cars

The Institute of Scrap Recycling Industries, Inc. (ISRI) expressed concern about the proposed requirements for securing flattened cars. ISRI stated:

> Companies that process and load flattened and crushed cars for transport to recycling facilities must follow stringent practices to prevent loose material from falling from these loads. There are several different ways by which junked cars are flattened or crushed. Each of these practices includes processing controls and numerous inspections of the car to detect and remove loose material that could fall from the load during transport. A secured load of property processed and loaded flattened or crushed cars can be visually inspected by any law enforcement officer or transportation official to ascertain that the load will not shed loose material onto the roadway during transport.

Hugo Neu Corporation submitted comments in opposition to those of ISRI. Hugo Neu stated:

> We are aware of the fact that a trade association of which we are a member, ISRI, along with the Steel Manufacturers Association (SMA), has commented on the proposed rules and prepared a presentation which purports to demonstrate that the proposed containment barriers are not needed to prevent the shifting and falling of cargo as it relates to flattened cars. Those comments are directed at attempting to mitigate the proposed standards requiring either four or three-sided trailers for transport of flattened cars with other containment requirements. ISRI and SMA have taken the position that these cars can be safety transported on a flatbed without walls. We strongly disagree.

FMCSA Response

The FMCSA recognizes the concerns expressed by ISRI and the Steel Manufacturers Association. However, we believe the proposed rules concerning the securement of flattened cars should be adopted without change. While the specific practices for flattening cars ISRI mentioned may greatly reduce the likelihood that loose pieces will fall from the commercial motor vehicle transporting the flattened cars, we are not convinced that the flattening process alone would ensure transportation safety.

This subject was debated extensively during the public meetings concerning the development of the model regulations. None of the information presented by ISRI or the transporters of flattened cars during those public meetings was convincing to the Federal, State and Provincial government representatives present, or the other industry groups represented. Consequently the model regulations included the language that FMCSA proposed.

We continue to doubt that the degree to which cars are compressed ensures that none of the components will fall from the cars. The cars are compressed to a fraction of their original height to make it easier to transport them to recycling facilities. Most of the parts would be pressed together but some items such as door handles and mirrors may remain loosely attached to the vehicle. We believe that having loose parts is inevitable given that the process of compressing the car will undoubtedly do more damage to the car than the events that resulted in the car being turned over for recycling.

A visual inspection, even by drivers or enforcement personnel, is not sufficient for making a determination whether portions of the load will vibrate or shake loose while the vehicle is traveling on public roads. Flattened cars are usually transported on flatbed trailers, and stacked in such a manner that neither a driver nor an inspector could determine with any degree of certainty whether there are loose items without climbing the stack of flattened cars to physically examine the load. We believe such an exercise would not effectively ensure safety because of the potential that a loose component could be missed during the inspection, and because of the risks to drivers and enforcement personnel associated with climbing stacks of flattened cars.

There is a need for practical requirements for ensuring that commercial motor vehicles are properly equipped to prevent loose items that separate from the flattened car during transport from falling onto the roadway, without relying on risky inspection procedures for drivers or enforcement personnel. The rules being adopted today provide practical standards that would ensure that loose components on the flattened cars do not fall from the transport vehicle.

Visibility Requirements for Drivers of Self-Steer Dollies

The ATA requested that § 392.9(a)(3) include an exception for drivers of self-steer dollies. These dollies are typically a set of axles at the rear of a very long load. The cargo being transported between the truck tractor (or towing unit) and the dolly obscures the dolly driver's view because the driver is positioned under the load. The ATA argues that because the driver seated in the dolly is in contact with the driver in the truck tractor, the safety of the operation is not compromised by the fact that the load obscures the view of the dolly operator.

FMCSA Response

FMCSA agrees with the ATA recommendation. Although it is important for CMV drivers to be capable of seeing other vehicles in the vicinity of the CMV, the agency does not believe safety would be adversely affected by cargo obscuring the dolly driver's view directly in front of him or her. Since the driver with primary control for the operation of the combination vehicle is in the truck tractor, and the driver in the truck tractor and dolly are able to communicate, there is no reason to be that safety would compromised. This is especially the case given that the commercial vehicle would most likely have escort vehicles.

Discussion of the Final Rule

The rules being adopted are based on the North American Cargo Securement Standard Model Regulations. The agency is replacing its current cargo securement-related regulations under § 392.9, concerning driver inspection of cargo and cargo securement systems, and §§ 393.100 through 393.106 concerning cargo securement methods.

The agency is also amending § 393.5 to adopt definitions of aggregate working load limit; anchor point; article of cargo; bell pipe concrete; blocking; bracing; frame vehicle; friction mat; hook-lift container; integral securement system; longwood; rail vehicle; shortwood; sided vehicle; tiedown; tractor-pole trailer; void filler; well; and working load limit. The agency is adopting these definitions to ensure a common understanding of the terminology used in the regulations. The definitions are based on those in the model regulations.

The FMCSA notes that there are numerous other definitions in the model regulations. However, the agency continues to believe that it is not necessary to adopt many of those definitions because the terms are already defined in the FMCSRs, even though with slightly different wording.

Inspection of Cargo and Securement Devices

The FMCSA is revising § 392.9 to require that drivers inspect the cargo and the securement devices within the first 50 miles (80.4 kilometers). Currently, § 392.9 requires inspection within the first 25 miles (40.2 kilometers). The FMCSA continues to believe that the research concerning the effects of vibration on cargo securement devices and changes in the tension of indirect tiedowns, suggests that conditions of the securement system which would require the driver to make readjustments are more likely to occur after the vehicle has been driven between 25 and 50 miles, rather than 0 to 25 miles. This is because traveling beyond 25 miles would subject the vehicle to more vibration and forces over a longer period of time. However, the agency believes the maximum distance the vehicle could be operated safely prior to the inspection of the tiedowns should not exceed 50 miles. All other requirements currently contained in § 392.9 would remain the same.

Applicability of the Final Rule

Section 393.100 establishes the applicability of the cargo securement rules under subpart I of part 393. The applicability of the final rule is the same as the existing rule, covering all cargo-carrying commercial motor vehicles (as defined in 49 CFR 390.5) operated in interstate commerce.

Performance Criteria

The agency is adopting new performance requirements concerning the longitudinal, lateral, and vertical accelerations that cargo securement systems must withstand to satisfy the rules. Acceleration is the rate at which the speed or velocity of an object increases and deceleration is the rate at which the velocity decreases. Accelerations are commonly reported as a proportion of the acceleration due to gravity (g). This acceleration is 9.81 meters/second/second (32.3 feet/second/second), which means that the velocity of an object dropped from a high elevation increases by 9.81 meters/second (32.3 feet/second). The FMCSA requires that cargo securement systems be capable of withstanding the following three forces, applied separately:

(1) 0.8 g deceleration in the forward direction;

(2) 0.5 g acceleration in the rearward direction; and

(3) 0.5 g acceleration in a lateral direction.

The values chosen are based on the researchers' analysis of previous studies concerning commercial motor vehicle performance. The analysis indicated that the highest deceleration likely for an empty or lightly loaded vehicle with an antilock brake system, all brakes properly adjusted, and warmed to provide optimal braking performance, is in the range of 0.8–0.85 g. However, a typical loaded vehicle would not be expected to achieve a deceleration greater than 0.6 g on a dry road.

The typical lateral acceleration while driving a curve or ramp at the posted advisory speed is in the range 0.05–0.17 g. Loaded vehicles with a high center of gravity roll over at a lateral acceleration above 0.35 g. Lightly loaded vehicles, or heavily loaded vehicles with a lower center of gravity, may withstand lateral acceleration forces greater than 0.50 g. We continue to believe that the information presented by the researchers supports the use of the decelerations listed above.

Generally, motor carriers are not required to conduct testing of cargo securement systems to determine compliance with the performance requirement. Section 393.102 explicitly states that cargo that is immobilized or secured in accordance with general rules regarding cargo securement systems, or the commodity-specific rules, are considered to meet the performance criteria.

Safe and Proper Working Condition for Tiedowns

The final rule includes a requirement that all vehicle structures, systems, parts, and components used to secure cargo must be in proper working order when used to perform that function with no damaged or weakened components that could adversely effect their performance. This requirement differs from the proposed rule in that the defect or deficiency must be capable of having an adverse effect on the performance of the cargo securement system before the prohibition would apply. The proposal would have prohibited the use of cargo securement devices with any visible damage, including but not limited to, cracks, cuts and deformation, regardless of whether there was any reason to believe there would be a safety problem. We carefully considered the numerous comments on the proposed language, and have made appropriate revision to the rule.

Standards for Tiedowns

The current FMCSRs incorporate by reference manufacturing standards for certain types of tiedowns including steel strapping, chain, synthetic webbing, wire rope, and cordage. The FMCSA is updating its reference to the National Association of Chain Manufacturers' (NACM) Welded Steel Chain Specifications, June 15, 1990, edition to incorporate by reference the November 15, 1999, version. The agency notes that some of the working load limit values in the 1999 version differ slightly from those in the 1990 version. Also, the 1999 version includes working load limits for a new grade of alloy chain, grade 100.

The agency is also changing its reference for synthetic webbing from the 1991 edition to the 1998 edition of the Web Sling and Tiedown Association's publication. Generally, the working load limits are the same as those in the 1991 publication.

Combining Requirements for Load Binders, Attachment Points and Winches

The agency had proposed that §§ 393.112, 393.114, and 393.116 provide requirements for load binders and associated hardware, attachment points on commercial motor vehicles for tiedowns, and winches of fastening devices, respectively. Upon careful review of the proposed requirements and in response to numerous comments about the apparent redundancy with the general requirements under

§§ 393.104(c), and 393.106(d), the final rule does not include the proposed wording that appeared in those sections. The remaining sections of the final rule have been renumbered accordingly.

Securement of Intermodal Containers and the Contents of Such Containers

The FMCSA is adopting commodity-specific requirements which would apply to intermodal cargo containers. The requirements being adopted today includes a provision allowing motor carriers the option of attaching tiedowns to the upper corners of loaded containers. The proposal would have required that all tiedowns be attached to the lower corners of the loaded containers. The agency agreed with commenters concerns about the need for flexibility in securing the containers.

The agency is including in the final rule a provision concerning the transportation of empty intermodal containers. Upon careful review of the model regulations and previously issued regulatory guidance, the agency determined that a less stringent provision concerning the securement of empty containers should be included. Empty intermodal containers have been transported safely on vehicles other than container chassis for many years. Frequently, the container(s) may overhand the front or rear of the trailer. However, as long the containers are properly secured, motor carriers have been allowed to transport them in this manner. Since the empty containers are a fraction of the weight of fully laden containers, the securement methods needed to ensure safety are not as extensive as with loaded containers. The new language concerning empty containers is provided in § 393.126(d).

The agency is also adopting specific rules for metal coils transported in intermodal cargo containers. The agency does not believe the rules will create difficulties for motor carriers or shippers offering loaded containers for transportation.

For example, § 392.9(a) requires drivers to assure themselves that cargo is properly distributed and adequately secured before operating a commercial motor vehicle. Section 392.9(b) requires drivers to examine the cargo and load-securing devices during the trip and make adjustments when necessary to maintain the security of the load. Section 392.9(b) provides an exception for driver's of sealed commercial motor vehicles who have been ordered not to open the vehicle to inspect its cargo, or to drivers of vehicles loaded in a manner that makes inspection of the cargo impracticable. The requirements of § 392.9 when combined with the explicit requirements concerning the securement of the contents inside intermodal containers would make it clear that each motor carrier and each driver must ensure that such loads are properly secured, when it is practicable to inspect the condition of loading.

Front End Structures on CMVs

Although the model regulations do not include a provision concerning front end structures (*i.e.*, headerboards) used as part of a cargo securement system, the FMCSA is retaining its current front-end structure rules for CMVs. The FMCSA is, however, revising its current rule (§ 393.106) by changing the applicability to cover CMVs transporting cargo that is in contact with the front-end structure of the vehicle. By contrast, the current rule establishes requirements for, and requires that vehicles be equipped with, front-end structures irrespective of whether the device is being used as part of a cargo securement system.

The current rules emphasize occupant protection rather than cargo securement. They assume that cargo that is not braced against a front-end structure could shift forward, and the structure would prevent the load from penetrating the driver's compartment. While this concept may have merit for certain types of cargo, we continue to believe that the best way to ensure driver safety is to have tougher standards to prevent the cargo from shifting forward. For example, if the vehicle is transporting metal coils, once the load begins to move forward, it is unlikely that a front-end structure would save the driver. However, by establishing new rules to better ensure that the coils do not move forward, we are more likely to accomplish the safety objective of saving lives and preventing injuries.

Specific Securement Requirements by Commodity Type

The FMCSA is adopting detailed requirements for the securement of the following commodities: logs; dressed lumber; metal coils; paper rolls; concrete pipe; intermodal containers; automobiles, light trucks and vans; heavy vehicles, equipment and machinery; flattened or crushed vehicles; roll-on/roll-off containers; and large boulders. During public meetings concerning the development of the model regulations, participants said that these commodities cause the most disagreement between industry and enforcement agencies as to what is required for proper securement.

The FMCSA notes that each of these commodities must be properly secured under the current performance-based cargo securement rules. However, with the exception of metal coils, there is no detailed guidance for motor carriers and enforcement officials. We continue to believe that accidents may be prevented through the establishment of much more detailed rules that clearly spell out what is required to achieve the desired level of safety. The rules would eliminate most of the confusion about what constitutes an acceptable cargo securement system.

The FMCSA notes that the requirements for the securement of concrete pipe being adopted today does not include the provision requiring that ice be removed from pipe before it is loaded. The agency no longer believes that provision is necessary because most shipments of concrete pipe would not be covered with ice, and in those cases where ice was present, there may be no practicable means of deicing the pipe prior to it being loaded onto a CMV. Most shippers of concrete pipe would ensure to the greatest extent practicable that the pipe is not covered with ice immediately prior to transport. For those cases in which exposure to ice could not be avoided, motor carriers are strongly encouraged to take appropriate actions to ensure that load is properly secured before transport. However, the agency does not believe it is necessary to make the mere presence of any amount of ice on a concrete pipe a violation of the FMCSRs.

Use of Unmarked Tiedowns

The final rule does not include a prohibition on the use of unmarked tiedown devices. Although many of the participants in the harmonization group meetings and numerous commenters to the NPRM argue that the Federal cargo securement rules should include such a prohibition, we do not believe it is appropriate to establish such a rule at this time.

Before establishing a prohibition on the use of unmarked tiedowns, the FMCSA would have to quantify the potential economic burden on the motor carrier industry and those involved with the manufacture, sale, and distribution of unmarked securement devices. Since the FMCSA has no reliable information on the number of manufacturers, distributors, and retailers of unmarked tiedowns, the quality or strength of such devices, or the amount of these tiedowns currently in use by motor carriers and in retailers' stock, it would be inappropriate to prohibit these devices. However, in view of the potential safety hazards of motor carriers misidentifying unmarked tiedowns, the final rule includes a provision that unmarked welded steel

chain be considered to have a working load limit equal to that of grade 30 proof coil, and other types of unmarked tiedowns be considered to have a working load limit equal to the lowest rating for that type in the table of working load limits.

Rating and Marking of Anchor Points

The final rule does not include a requirement that anchor points be rated and marked. While we continue to agree with the basic principle of rating and marking of anchor points, there is insufficient data to support establishing manufacturing standards at this time. As we indicated above, we will continue to work with the TTMA and other private sector groups to gather information about the extent to which trailer manufacturers follow the TTMA's recommended practice concerning rating and marking of anchor points. As we gather this information, we will consider the need for any future standards development work in this area.

Development of Training Program

The agencies and organizations participating in the North American Cargo Securement Program have established a Training and Education Committee responsible for developing a training package for motor carriers and enforcement officials to ensure that the model regulations now being considered for adoption throughout North America are understood by all affected parties. The training package will cover all of the requirements in the model regulations, and to some extent, best practices for securing cargo. The training materials may be used to help motor carriers better understand how to properly secure different types of cargo and to ensure they are aware of what is required. Enforcement officials could also use the training material to ensure that they have an understanding of the new requirements. It is anticipated that the training materials will be completed and available to the public from the FMCSA before the deadline for compliance with the final rule. The FMCSA will post publications on its website to assist individuals with Internet access. The FMCSA will also consider making copies of the training materials available through the U.S. Department of Commerce's National Technical Information Service.

Compliance Date

The FMCSA has chosen January 1, 2004, as the deadline for motor carriers to ensure compliance with the final rule. The FMCSA believes this time frame is appropriate and will provide motor carriers and enforcement officials sufficient time to prepare for the transition from the current requirements to rules compatible with the model regulations.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures. Neither the level of public or Congressional interest, nor the costs of implementing the final rule are such that the rule would be considered significant. Based on the information currently available, the cost to the motor carrier industry for compliance with the rules, and the cost to the States for adopting and enforcing the new requirements will be significantly less than the $100,000,000 threshold used as one of the factors in determining the significance of a rulemaking.

This rule requires that motor carriers operating in interstate commerce comply with improved cargo securement regulations based on the following: (1) The results of a multi-year comprehensive research program to evaluate current U.S. and Canadian cargo securement regulations; (2) the motor carrier industry's best practices; and (3) recommendations presented during a series of public meetings. Generally, the revision requires motor carriers to change the way cargo securement devices are used to prevent certain articles from shifting on or within, or falling from, CMVs, and how calculations are done. In some instances, the changes require motor carriers to increase the number of tiedown devices used to secure certain types of cargoes.

The agency believes the vast majority of motor carriers have a sufficient supply of tiedown devices on board their vehicles at all times. The final rule allows motor carriers to continue using those tiedowns provided the devices meet the applicable manufacturing standards currently incorporated by reference in § 393.102(b).

Most of the costs associated with this rulemaking are believed to be associated with the training of drivers, motor carrier employees responsible for loading CMVs, and enforcement officials to ensure that they understand the requirements being adopted. However, this cost should be minimal because the commodity-specific rules have been drafted to enable the reader to use the rules as step-by-step instructions for securing the commodity being transported.

With regard to costs to the States to train inspectors, the agency is working with its State and Provincial partners to develop training materials that could be used to minimize the costs for the enforcement community and the motor carrier industry. For States participating in the Motor Carrier Safety Assistance Program (MCSAP), training costs are considered an eligible expense. This means the States could receive Federal funds to help cover the costs of training their roadside inspectors. Therefore, based upon the information above, the agency estimates that the economic impact associated with this rulemaking action would be minimal and a full regulatory evaluation is not necessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has considered the effects of this regulatory action on small entities and determined that this rule would affect a substantial number of small entities but would not have a significant impact on them.

Generally, the final rule requires motor carriers to change the way cargo securement devices are used to prevent certain articles from shifting on or within, or falling from, CMVs. In some instances, the rule requires motor carriers to increase the number of tiedown devices used to secure certain types of cargoes. However, the rule does not require motor carriers to purchase new equipment.

The FMCSA finds that the vast majority of motor carriers have a sufficient supply of tiedown devices on board their vehicles at all times.

The agency believes the number of tiedowns on board and the strength of these devices are usually sufficient to secure whatever types of loads the motor carrier is transporting, or intends to transport. As we stated in the preamble to the notice of proposed rulemaking, the cargo securement problems typically observed during roadside inspections of flatbed trailers are ones in which motor carriers do not use enough of the tiedowns that they already have on board their vehicles. In the case of van type trailers, the problem is that some motor carriers do not use any securement devices to prevent loads from shifting. Therefore, FMCSA believes that motor carriers already have all the hardware they need to comply with the proposed changes. The challenge for motor carriers is to learn how to properly use tiedown devices to

further reduce the occurrence of cargo securement-related accidents.

Motor carriers are currently required to use tiedown devices that meet applicable manufacturing standards incorporated by reference in § 393.102(b). Under the final rule, the agency is continuing to require motor carriers to use only tiedown devices that meet manufacturing standards currently specified § 393.102(b). If the tiedowns are in safe and proper condition, and meet the applicable manufacturing standards, use of the devices is not prohibited by this rule.

As indicated above, additional costs may be associated with training of motor carrier employees responsible for loading CMVs, drivers, and enforcement officials to ensure that they understand the requirements being considered. The final rule does not adopt the provisions in the NPRM that distinguish between direct and indirect tiedowns. This means that there are very few aspects, if any, of the new requirements that differ significantly from the technical concepts in the current rules, and the best practices of the motor carrier industry. However, training may be desirable for some individuals. It is more likely than not that compliance with the final rule could be achieved with a minimal amount of training. This is because the commodity-specific rules have been drafted to enable the reader to use the rules as step-by-step instructions for securing the commodity being transported.

For motor carriers that provide training for their drivers, the costs could vary with the number of hours for training, and the number of drivers being trained. At a minimum, training costs would include wages for the drivers. The FMCSA reviewed earnings information from the U.S. Department of Labor. The FMCSA used the ''Occupational Outlook Handbook,'' 2000–01 Edition, Bulletin 2520. The median hourly earnings of drivers of light and heavy trucks were $11.67 in 1998. The middle 50 percent earned between $8.80 and $15.57 an hour. The lowest 10 percent earned less than $6.51 and the highest 10 percent earned more than $19.14 an hour.

If a motor carrier provided one hour of training for 10 drivers in the middle 50 percent, the maximum cost would be $155.70 (10 drivers × $15.57 an hour per driver × 1 hour) in wages for the drivers to attend training, plus the cost for the instructor and course materials. If the training for the same group of drivers was expanded to four hours the cost would be $622.80 (10 drivers x $15.57 an hour per driver x 4 hours) in wages for the drivers to attend training, plus the cost for the instructor, and course materials. If the drivers earned $20 an hour, the costs for the group of drivers to attend class for 4 hours would be $800. These examples indicate how the costs per motor carrier could vary greatly depending on the number of drivers to be trained, and the amount of training required.

The FMCSA cannot determine at this time the amount of training drivers and other motor carrier employees may need. However, the agency estimates that for a small entity employing 10 drivers the costs would not exceed $1,000 ($800 for drivers' wages + $200 for the instructor and course materials). The agency believes the economic impact on such motor carriers of these training costs will be minimal.

Accordingly, the FMCSA has considered the economic impacts of the requirements on small entities and certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FMCSA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. It has been determined that this rulemaking does not have a substantial direct effect on States, nor would it limit the policy-making discretion of the States. Nothing in this document preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The Federal Motor Carrier Safety Administration (FMCSA) is a new administration within the Department of Transportation (DOT). We are striving to meet all of the statutory and executive branch requirements on rulemaking. The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order is consistent with and reflects the procedures for considering environmental impacts under DOT Order 5610.1C. The FMCSA analyzed this final rule under the NEPA and DOT Order 5610.1C. Since the final rule relates only to the way motor carriers use cargo securement devices to prevent certain articles from shifting on or within, or falling from CMVs, we believe it would be among the type of regulations that would be categorically excluded from any environmental assessment.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. We have determined that it is not a ''significant energy action'' under that order because it is not economically significant and is not likely to have a significant adverse

effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 392

Highway safety, Motor carriers.

49 CFR Part 393

Highway safety, Incorporation by reference, Motor carriers, Motor vehicle safety.

In consideration of the foregoing, the FMCSA is amending title 49, Code of Federal Regulations, chapter III, as follows:

PART 392—[AMENDED]

1. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 31136 and 31502; and 49 CFR 1.73.

2. Section 392.9 is revised to read as follows:

§ 392.9 Inspection of cargo, cargo securement devices and systems.

(a) *General.* A driver may not operate a commercial motor vehicle and a motor carrier may not require or permit a driver to operate a commercial motor vehicle unless—

(1) The commercial motor vehicle's cargo is properly distributed and adequately secured as specified in §§ 393.100 through 393.142 of this subchapter.

(2) The commercial motor vehicle's tailgate, tailboard, doors, tarpaulins, spare tire and other equipment used in its operation, and the means of fastening the commercial motor vehicle's cargo, are secured; and

(3) The commercial motor vehicle's cargo or any other object does not obscure the driver's view ahead or to the right or left sides (except for drivers of self-steer dollies), interfere with the free movement of his/her arms or legs, prevent his/her free and ready access to accessories required for emergencies, or prevent the free and ready exit of any person from the commercial motor vehicle's cab or driver's compartment.

(b) *Drivers of trucks and truck tractors.* Except as provided in paragraph (b)(4) of this section, the driver of a truck or truck tractor must—

(1) Assure himself/herself that the provisions of paragraph (a) of this section have been complied with before he/she drives that commercial motor vehicle;

(2) Inspect the cargo and the devices used to secure the cargo within the first 50 miles after beginning a trip and cause any adjustments to be made to the cargo or load securement devices as necessary, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from the commercial motor vehicle; and

(3) Reexamine the commercial motor vehicle's cargo and its load securement devices during the course of transportation and make any necessary adjustment to the cargo or load securement devices, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from, the commercial motor vehicle. Reexamination and any necessary adjustments must be made whenever —

(i) The driver makes a change of his/her duty status; or

(ii) The commercial motor vehicle has been driven for 3 hours; or

(iii) The commercial motor vehicle has been driven for 150 miles, whichever occurs first.

(4) The rules in this paragraph (b) do not apply to the driver of a sealed commercial motor vehicle who has been ordered not to open it to inspect its cargo or to the driver of a commercial motor vehicle that has been loaded in a manner that makes inspection of its cargo impracticable.

PART 393—[AMENDED]

3. The authority citation for part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914; 49 U.S.C. 31136 and 31502; and 49 CFR 1.73.

4. Amend § 393.5 to add the following definitions in alphabetical order:

§ 393.5 Definitions.

* * * * *

Aggregate working load limit. The summation of the working load limits or restraining capacity of all devices used to secure an article of cargo on a vehicle.

* * * * *

Anchor point. Part of the structure, fitting or attachment on a vehicle or article of cargo to which a tiedown is attached.

* * * * *

Article of cargo. A unit of cargo, other than a liquid, gas, or aggregate that lacks physical structure (e.g., grain, gravel, etc.) including articles grouped together so that they can be handled as a single unit or unitized by wrapping, strapping, banding or edge protection device(s).

* * * * *

Bell pipe concrete. Pipe whose flanged end is of larger diameter than its barrel.

Blocking. A structure, device or another substantial article placed against or around an article of cargo to prevent horizontal movement of the article of cargo.

Bracing. A structure, device, or another substantial article placed against an article of cargo to prevent it from tipping, that may also prevent it from shifting.

* * * * *

Dunnage. All loose materials used to support and protect cargo.

Dunnage bag. An inflatable bag intended to fill otherwise empty space between articles of cargo, or between articles of cargo and the wall of the vehicle.

* * * * *

Edge protector. A device placed on the exposed edge of an article to distribute tiedown forces over a larger area of cargo than the tiedown itself, to protect the tie-down and/or cargo from damage, and to allow the tiedown to slide freely when being tensioned.

* * * * *

Frame vehicle. A vehicle with skeletal structure fitted with one or more bunk units for transporting logs. A bunk unit consists of U-shaped front and rear bunks that together cradle logs. The bunks are welded, gusseted or otherwise firmly fastened to the vehicle's main beams, and are an integral part of the vehicle.

Friction mat. A device placed between the deck of a vehicle and article of cargo, or between articles of cargo, intended to provide greater friction than exists naturally between these surfaces.

* * * * *

g. The acceleration due to gravity, 32.2 ft/sec^2 (9.823 m/sec^2).

* * * * *

Hook-lift container. A specialized container, primarily used to contain and transport materials in the waste, recycling, construction/demolition and scrap industries, which is used in conjunction with specialized vehicles, in which the container is loaded and unloaded onto a tilt frame body by an articulating hook-arm.

* * * * *

Integral securement system. A system on certain roll-on/roll-off containers and hook-lift containers and their related transport vehicles in which compatible front and rear hold down devices are mated to provide securement of the complete vehicle and its articles of cargo.

* * * * *

Longwood. All logs that are not shortwood, i.e., are over 4.9 m (16 feet) long. Such logs are usually described as long logs or treelength.

* * * * *

Rail vehicle. A vehicle whose skeletal structure is fitted with stakes at the front

and rear to contain logs loaded crosswise.

* * * * *

Shoring bar. A device placed transversely between the walls of a vehicle and cargo to prevent cargo from tipping or shifting.

Shortwood. All logs typically up to 4.9 m (16 feet) long. Such logs are often described as cut-up logs, cut-to-length logs, bolts or pulpwood. Shortwood may be loaded lengthwise or crosswise, though that loaded crosswise is usually no more than 2.6 m (102 inches) long.

* * * * *

Sided vehicle. A vehicle whose cargo compartment is enclosed on all four sides by walls of sufficient strength to contain articles of cargo, where the walls may include latched openings for loading and unloading, and includes vans, dump bodies, and a sided intermodal container carried by a vehicle.

* * * * *

Tiedown. A combination of securing devices which forms an assembly that attaches articles of cargo to, or restrains articles of cargo on, a vehicle or trailer, and is attached to anchor point(s).

Tractor-pole trailer. A combination vehicle that carries logs lengthwise so that they form the body of the vehicle. The logs are supported by a bunk located on the rear of the tractor, and another bunk on the skeletal trailer. The tractor bunk may rotate about a vertical axis, and the trailer may have a fixed, scoping, or cabled reach, or other mechanical freedom, to allow it to turn.

* * * * *

Void filler. Material used to fill a space between articles of cargo and the structure of the vehicle that has sufficient strength to prevent movement of the articles of cargo.

* * * * *

Well. The depression formed between two cylindrical articles of cargo when they are laid with their eyes horizontal and parallel against each other.

* * * * *

Working load limit (WLL). The maximum load that may be applied to a component of a cargo securement system during normal service, usually assigned by the manufacturer of the component.

5. Section 393.7 is revised as follows:

§ 393.7 Matter incorporated by reference.

(a) *Incorporation by reference.* Part 393 includes references to certain matter or materials, as listed in paragraph (b) of this section. The text of the materials is not included in the regulations contained in part 393. The materials are hereby made a part of the regulations in part 393. The Director of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Federal Register and specified in the regulation are incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

(b) *Matter or materials referenced in part 393.* The matter or materials listed in this paragraph are incorporated by reference in the corresponding sections noted.

(1) Highway Emergency Signals, Fourth Edition, Underwriters Laboratories, Inc., UL No. 912, July 30, 1979, (with an amendment dated November 9, 1981), incorporation by reference approved for § 393.95(j).

(2) Standard Specification for Strapping, Flat Steel and Seals, American Society for Testing and Materials (ASTM), D3953–97, February 1998, incorporation by reference approved for § 393.104(e).

(3) Welded Steel Chain Specifications, National Association of Chain Manufacturers, November 15, 1999, incorporation by reference approved for § 393.104(e).

(4) Recommended Standard Specification for Synthetic Web Tiedowns, Web Sling and Tiedown Association, WSTDA–T1, 1998, incorporation by reference approved for § 393.104(e).

(5) Wire Rope Users Manual, 2nd Edition, Wire Rope Technical Board November 1985, incorporation by reference approved for § 393.104(e).

(6) Cordage Institute rope standards approved for incorporation into § 393.104(e):

(i) PETRS–2, Polyester Fiber Rope, 3-Strand and 8-Strand Constructions, January 1993;

(ii) PPRS–2, Polypropylene Fiber Rope, 3-Strand and 8-Strand Constructions, August 1992;

(iii) CRS–1, Polyester/Polypropylene Composite Rope Specifications, Three-Strand and Eight-Strand Standard Construction, May 1979;

(iv) NRS–1, Nylon Rope Specifications, Three-Strand and Eight-Strand Standard Construction, May 1979; and

(v) C–1, Double Braided Nylon Rope Specifications DBN, January 1984.

(c) *Availability.* The materials incorporated by reference are available as follows:

(1) Standards of the Underwriters Laboratories, Inc. Information and copies may be obtained by writing to: Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(2) Specifications of the American Society for Testing and Materials. Information and copies may be obtained by writing to: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428–2959.

(3) Specifications of the National Association of Chain Manufacturers. Information and copies may be obtained by writing to: National Association of Chain Manufacturers, P.O. Box 22681, Lehigh Valley, Pennsylvania 18002–2681.

(4) Specifications of the Web Sling and Tiedown Association. Information and copies may be obtained by writing to: Web Sling and Tiedown Association, Inc., 5024–R Campbell Boulevard, Baltimore, Maryland 21236–5974.

(5) Manuals of the Wire Rope Technical Board. Information and copies may be obtained by writing to: Wire Rope Technical Committee, P.O. Box 849, Stevensville, Maryland 21666.

(6) Standards of the Cordage Institute. Information and copies may be obtained by writing to: Cordage Institute, 350 Lincoln Street, # 115, Hingham, Massachusetts 02043.

(7)–(9) [Reserved].

(10) All of the materials incorporated by reference are available for inspection at:

(i) The Federal Motor Carrier Safety Administration, Office of Bus and Truck Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590; and

(ii) The Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

6. Section 393.95(j) is amended by replacing the reference to ''§ 393.7(b)'' with ''§ 393.7(c).''

7. Subpart I of part 393 is revised to read as follows:

Subpart I—Protection Against Shifting and Falling Cargo

§ 393.100 Which types of commercial motor vehicles are subject to the cargo securement standards of this subpart, and what general requirements apply?

(a) *Applicability.* The rules in this subpart are applicable to trucks, truck tractors, semitrailers, full trailers, and pole trailers.

(b) *Prevention against loss of load.* Each commercial motor vehicle must, when transporting cargo on public roads, be loaded and equipped, and the cargo secured, in accordance with this subpart to prevent the cargo from leaking, spilling, blowing or falling from the motor vehicle.

(c) *Prevention against shifting of load.* Cargo must be contained, immobilized or secured in accordance with this subpart to prevent shifting upon or within the vehicle to such an extent that the vehicle's stability or maneuverability is adversely affected.

§ 393.102 What are the minimum performance criteria for cargo securement devices and systems?

(a) *Performance criteria.* Cargo securement devices and systems must be capable of withstanding the following three forces, applied separately:

(1) 0.8 g deceleration in the forward direction;

(2) 0.5 g acceleration in the rearward direction; and

(3) 0.5 g acceleration in a lateral direction.

(b) *Performance criteria for devices to prevent vertical movement of loads that are not contained within the structure of the vehicle.* Securement systems must provide a downward force equivalent to at least 20 percent of the weight of the article of cargo if the article is not fully contained within the structure of the vehicle. If the article is fully contained within the structure of the vehicle, it may be secured in accordance with § 393.106(b).

(c) *Prohibition on exceeding working load limits.* Cargo securement devices and systems must be designed, installed, and maintained to ensure that the maximum forces acting on the devices or systems do not exceed the working load limit for the devices under the conditions listed in paragraphs (a) and (b) of this section.

(d) *Equivalent means of securement.* Cargo that is immobilized, or secured in accordance with the applicable requirements of §§ 393.104 through 393.136, is considered as meeting the performance criteria of this section.

§ 393.104 What standards must cargo securement devices and systems meet in order to satisfy the requirements of this subpart?

(a) *General.* All devices and systems used to secure cargo to or within a vehicle must be capable of meeting the requirements of § 393.102.

(b) *Prohibition on the use of damaged securement devices.* All vehicle structures, systems, parts, and components used to secure cargo must be in proper working order when used to perform that function with no damaged or weakened components that will adversely effect their performance for cargo securement purposes, including reducing the working load limit, and must not have any cracks or cuts.

(c) *Vehicle structures and anchor points.* Vehicle structures, floors, walls, decks, tiedown anchor points, headerboards, bulkheads, stakes, posts and associated mounting pockets used to contain or secure articles of cargo must be strong enough to meet the performance criteria of § 393.102, with no damaged or weakened components that will adversely effect their performance for cargo securement purposes, including reducing the working load limit, and must not have any cracks or cuts.

(d) *Material for dunnage, chocks, cradles, shoring bars, blocking and bracing.* Material used as dunnage or dunnage bags, chocks, cradles, shoring bars, or used for blocking and bracing, must not have damage or defects which would compromise the effectiveness of the securement system.

(e) *Manufacturing standards for tiedown assemblies.* Tiedown assemblies (including chains, wire rope, steel strapping, synthetic webbing, and cordage) and other attachment or fastening devices used to secure articles of cargo to, or in, commercial motor vehicles must conform to the following applicable standards:

An assembly component of . . .	Must conform to . . .
(1) Steel strapping [1, 2]	Standard Specification for Strapping, Flat Steel and Seals, American Society for Testing and Materials (ASTM) D3953–97, February 1998.[4]
(2) Chain	National Association of Chain Manufacturers' Welded Steel Chain Specifications, November 15, 1999.[4]
(3) Webbing	Web Sling and Tiedown Association's Recommended Standard Specification for Synthetic Web Tiedowns, WSTDA–T1, 1998.[4]
(4) Wire rope [3]	Wire Rope Technical Board's Wire Rope Users Manual, 2nd Edition, November 1985.[4]
(5) Cordage	Cordage Institute rope standard: (i) PETRS–2, Polyester Fiber Rope, three-Strand and eight-Strand Constructions, January 1993; [4] (ii) PPRS–2, Polypropylene Fiber Rope, three-Strand and eight-Strand Constructions, August 1992; [4] (iii) CRS–1, Polyester/Polypropylene Composite Rope Specifications, three-Strand and eight-Strand Standard Construction, May 1979; [4] (iv) NRS–1, Nylon Rope Specifications, three-Strand and eight-Strand Standard Construction, May 1979; [4] and

An assembly component of . . .	Must conform to . . .
	(v) C–1, Double Braided Nylon Rope Specifications DBN, January 1984.[4]

[1] Steel strapping not marked by the manufacturer with a working load limit will be considered to have a working load limit equal to one-fourth of the breaking strength listed in ASTM D3953–97.

[2] Steel strapping 25.4 mm (1 inch) or wider must have at least two pairs of crimps in each seal and, when an end-over-end lap joint is formed, must be sealed with at least two seals.

[3] Wire rope which is not marked by the manufacturer with a working load limit shall be considered to have a working load limit equal to one-fourth of the nominal strength listed in the manual.

[4] See § 393.7 for information on the incorporation by reference and availability of this document.

(f) *Use of tiedowns.* (1) Tiedowns and securing devices must not contain knots.

(2) If a tiedown is repaired, it must be repaired in accordance with the applicable standards in paragraph (e) of this section, or the manufacturer's instructions.

(3) Each tiedown must be attached and secured in a manner that prevents it from becoming loose, unfastening, opening or releasing while the vehicle is in transit.

(4) All tiedowns and other components of a cargo securement system used to secure loads on a trailer equipped with rub rails, must be located inboard of the rub rails whenever practicable.

(5) Edge protection must be used whenever a tiedown would be subject to abrasion or cutting at the point where it touches an article of cargo. The edge protection must resist abrasion, cutting and crushing.

§ 393.106 What are the general requirements for securing articles of cargo?

(a) *Applicability.* The rules in this section are applicable to the transportation of all types of articles of cargo, except commodities in bulk that lack structure or fixed shape (*e.g.*, liquids, gases, grain, liquid concrete, sand, gravel, aggregates) and are transported in a tank, hopper, box or similar device that forms part of the structure of a commercial motor vehicle. The rules in this section apply to the cargo types covered by the commodity-specific rules of § 393.122 through § 393.142. The commodity-specific rules take precedence over the general requirements of this section when additional requirements are given for a commodity listed in those sections.

(b) *General.* Cargo must be firmly immobilized or secured on or within a vehicle by structures of adequate strength, dunnage or dunnage bags, shoring bars, tiedowns or a combination of these.

(c) *Cargo placement and restraint.* (1) Articles of cargo that are likely to roll must be restrained by chocks, wedges, a cradle or other equivalent means to prevent rolling. The means of preventing rolling must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit.

(2) Articles or cargo placed beside each other and secured by transverse tiedowns must either:

(i) Be placed in direct contact with each other, or

(ii) Be prevented from shifting towards each other while in transit.

(d) *Minimum strength of cargo securement devices and systems.* The aggregate working load limit of any securement system used to secure an article or group of articles against movement must be at least one-half times the weight of the article or group of articles. The aggregate working load limit is the sum of:

(1) One-half of the working load limit of each associated connector or attachment mechanism used to secure a part of the article of cargo to the vehicle; and

(2) One-half of the working load limit for each end section of a tiedown that is attached to an anchor point.

§ 393.108 How is the working load limit of a tiedown determined?

(a) The working load limit (WLL) of a tiedown, associated connector or attachment mechanism is the lowest working load limit of any of its components (including tensioner), or the working load limit of the anchor points to which it is attached, whichever is less.

(b) The working load limits of tiedowns may be determined by using either the tiedown manufacturer's markings or by using the tables in this section. The working load limits listed in the tables are to be used when the tiedown material is not marked by the manufacturer with the working load limit. Tiedown materials which are marked by the manufacturer with working load limits that differ from the tables, shall be considered to have a working load limit equal to the value for which they are marked.

(c) Synthetic cordage (*e.g.*, nylon, polypropylene, polyester) which is not marked or labeled to enable identification of its composition or working load limit shall be considered to have a working load limit equal to that for polypropylene fiber rope.

(d) Welded steel chain which is not marked or labeled to enable identification of its grade or working load limit shall be considered to have a working load limit equal to that for grade 30 proof coil chain.

(e)(1) Wire rope which is not marked by the manufacturer with a working load limit shall be considered to have a working load limit equal to one-fourth of the nominal strength listed in the Wire Rope Users Manual.

(2) Wire which is not marked or labeled to enable identification of its construction type shall be considered to have a working load limit equal to that for 6×37, fiber core wire rope.

(f) Manila rope which is not marked by the manufacturer with a working load limit shall be considered to have a working load limit based on its diameter as provided in the tables of working load limits.

(g) Friction mats which are not marked or rated by the manufacturer shall be considered to provide resistance to horizontal movement equal to 50 percent of the weight placed on the mat.

TABLES TO § 393.108

[Working Load Limits (WLL), Chain]

Size mm (inches)	WLL in kg (pounds)				
	Grade 30 proof coil	Grade 43 high test	Grade 70 transport	Grade 80 alloy	Grade 100 alloy
1. 7 (1/4)	580 (1,300)	1,180 (2,600)	1,430 (3,150)	1,570 (3,500)	1,950 (4,300)
2. 8 (5/16)	860 (1,900)	1,770 (3,900)	2,130 (4,700)	2,000 (4,500)	2,600 (5,700)
3. 10 (3/8)	1,200 (2,650)	2,450 (5,400)	2,990 (6,600)	3,200 (7,100)	4,000 (8,800)
4. 11 (7/16)	1,680 (3,700)	3,270 (7,200)	3,970 (8,750)		
5. 13 (1/2)	2,030 (4,500)	4,170 (9,200)	5,130 (11,300)	5,400 (12,000)	6,800 (15,000)
6. 16 (5/8)	3,130 (6,900)	5,910 (13,000)	7,170 (15,800)	8,200 (18,100)	10,300 (22,600)
Chain Mark Examples:					
Example 1	3	4	7	8	10
Example 2	30	43	70	80	100
Example 3	300	430	700	800	1000

SYNTHETIC WEBBING

Width mm (inches)	WLL kg (pounds)
45 (1¾)	790 (1,750)
50 (2)	910 (2,000)
75 (3)	1,360 (3,000)
100 (4)	1,810 (4,000)

WIRE ROPE (6 X 37, FIBER CORE)

Diameter mm (inches)	WLL kg (pounds)
7 (1/4)	640 (1,400)
8 (5/16)	950 (2,100)
10 (3/8)	1,360 (3,000)
11 (7/16)	1,860 (4,100)
13 (1/2)	2,400 (5,300)
16 (5/8)	3,770 (8,300)
20 (3/4)	4,940 (10,900)
22 (7/8)	7,300 (16,100)
25 (1)	9,480 (20,900)

MANILA ROPE

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	90 (205)
11 (7/16)	120 (265)
13 (1/2)	150 (315)
16 (5/8)	210 (465)
20 (3/4)	290 (640)
25 (1)	480 (1,050)

POLYPROPYLENE FIBER ROPE WLL (3-STRAND AND 8-STRAND CONSTRUCTIONS)

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	180 (400)
11 (7/16)	240 (525)
13 (1/2)	280 (625)
16 (5/8)	420 (925)
20 (3/4)	580 (1,275)
25 (1)	950 (2,100)

POLYESTER FIBER ROPE WLL (3-STRAND AND 8-STRAND CONSTRUCTIONS)

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	250 (555)
11 (7/16)	340 (750)
13 (1/2)	440 (960)
16 (5/8)	680 (1,500)
20 (3/4)	850 (1,880)
25 (1)	1,500 (3,300)

NYLON ROPE

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	130 (278)
11 (7/16)	190 (410)
13 (1/2)	240 (525)
16 (5/8)	420 (935)
20 (3/4)	640 (1,420)
25 (1)	1,140 (2,520)

DOUBLE BRAIDED NYLON ROPE

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	150 (336)
11 (7/16)	230 (502)
13 (1/2)	300 (655)
16 (5/8)	510 (1,130)
20 (3/4)	830 (1,840)
25 (1)	1,470 (3,250)

STEEL STRAPPING

Width x thickness mm (inches)	WLL kg (pounds)
31.7 x .74 (1 1/4 x 0.029)	540 (1,190)
31.7 x .79 (1¼ x 0.031)	540 (1,190)
31.7 x .89 (1¼ x 0.035)	540 (1,190)
31.7 x 1.12 (1¼ x 0.044)	770 (1,690)
31.7 x 1.27 (1¼ x 0.05)	770 (1,690)
31.7 x 1.5 (1¼ x 0.057)	870 (1,925)
50.8 x 1.12 (2 x 0.044)	1,200 (2,650)
50.8 x 1.27 (2 x 0.05)	1,200 (2,650)

§ 393.110 What else do I have to do to determine the minimum number of tiedowns?

(a) In addition to the requirements of § 393.106, the minimum number of tiedowns required to secure an article or group of articles against movement depends on the length of the article(s) being secured, and the requirements of paragraphs (b) and (c) of this section.

(b) When an article is not blocked or positioned to prevent movement in the forward direction by a headerboard, bulkhead, other cargo that is positioned to prevent movement, or other appropriate blocking devices, it must be secured by at least:

(1) One tiedown for articles 5 feet (1.52 meters) or less in length, and 1,100 pounds (500 kg) or less in weight;

(2) Two tiedowns if the article is:

(i) 5 feet (1.52 meters) or less in length and more than 1,100 pounds (500 kg) in weight; or

(ii) Longer than 5 feet (1.52 meters) but less than or equal to 10 feet (3.04 meters) in length, irrespective of the weight.

(3) Two tiedowns if the article is longer than 10 feet (3.04 meters), and one additional tiedown for every 10 feet (3.04 meters) of article length, or fraction thereof, beyond the first 10 feet (3.04 meters) of length.

(c) If an individual article is required to be blocked, braced or immobilized to prevent movement in the forward direction by a headerboard, bulkhead, other articles which are adequately secured or by an appropriate blocking or immobilization method, it must be secured by at least one tiedown for every 3.04 meters (10 feet) or article length, or fraction thereof.

(d) *Special rule for special purpose vehicles.* The rules in this section do not apply to a vehicle transporting one or more articles of cargo such as, but not limited to, machinery or fabricated structural items (e.g., steel or concrete beams, crane booms, girders, and

trusses, etc.) which, because of their design, size, shape, or weight, must be fastened by special methods. However, any article of cargo carried on that vehicle must be securely and adequately fastened to the vehicle.

§ 393.112 Must a tiedown be adjustable?

Each tiedown, or its associated connectors, or its attachment mechanisms must be designed, constructed, and maintained so the driver of an in-transit commercial motor vehicle can tighten them. However, this requirement does not apply to the use of steel strapping.

§ 393.114 What are the requirements for front end structures used as part of a cargo securement system?

(a) *Applicability.* The rules in this section are applicable to commercial motor vehicles transporting articles of cargo that are in contact with the front end structure of the vehicle. The front end structure on these cargo-carrying vehicles must meet the performance requirements of this section.

(b) *Height and width.* (1) The front end structure must extend either to a height of 4 feet above the floor of the vehicle or to a height at which it blocks forward movement of any item of article of cargo being carried on the vehicle, whichever is lower.

(2) The front end structure must have a width which is at least equal to the width of the vehicle or which blocks forward movement of any article of cargo being transported on the vehicle, whichever is narrower.

(c) *Strength.* The front end structure must be capable of withstanding the following horizontal forward static load:

(1) For a front end structure less than 6 feet in height, a horizontal forward static load equal to one-half (0.5) of the weight of the articles of cargo being transported on the vehicle uniformly distributed over the entire portion of the front end structure that is within 4 feet above the vehicle's floor or that is at or below a height above the vehicle's floor at which it blocks forward movement of any article of the vehicle's cargo, whichever is less; or

(2) For a front end structure 6 feet in height or higher, a horizontal forward static load equal to four-tenths (0.4) of the weight of the articles of cargo being transported on the vehicle uniformly distributed over the entire front end structure.

(d) *Penetration resistance.* The front end structure must be designed, constructed, and maintained so that it is capable of resisting penetration by any article of cargo that contacts it when the vehicle decelerates at a rate of 20 feet per second, per second. The front end structure must have no aperture large enough to permit any article of cargo in contact with the structure to pass through it.

(e) *Substitute devices.* The requirements of this section may be met by the use of devices performing the same functions as a front end structure, if the devices are at least as strong as, and provide protection against shifting articles of cargo at least equal to, a front end structure which conforms to those requirements.

Specific Securement Requirements by Commodity Type

§ 393. 116 What are the rules for securing logs?

(a) *Applicability.* The rules in this section are applicable to the transportation of logs with the following exceptions:

(1) Logs that are unitized by banding or other comparable means may be transported in accordance with the general cargo securement rules of §§ 393.100 through 393.114.

(2) Loads that consist of no more than four processed logs may be transported in accordance with the general cargo securement rules of §§ 393.100 through 393.114.

(3) Firewood, stumps, log debris and other such short logs must be transported in a vehicle or container enclosed on both sides, front, and rear and of adequate strength to contain them. Longer logs may also be so loaded.

(b) *Components of a securement system.* (1) Logs must be transported on a vehicle designed and built, or adapted, for the transportation of logs. Any such vehicle must be fitted with bunks, bolsters, stakes or standards, or other equivalent means, that cradle the logs and prevent them from rolling.

(2) All vehicle components involved in securement of logs must be designed and built to withstand all anticipated operational forces without failure, accidental release or permanent deformation. Stakes or standards that are not permanently attached to the vehicle must be secured in a manner that prevents unintentional separation from the vehicle in transit.

(3) Tiedowns must be used in combination with the stabilization provided by bunks, stakes and bolsters to secure the load.

(c) *Use of securement system.* (1) Logs must be solidly packed, and the outer bottom logs must be in contact with and resting solidly against the bunks, bolsters, stakes or standards.

(2) Each outside log on the side of a stack of logs must touch at least two stakes, bunks, bolsters, or standards. If one end does not actually touch a stake, it must rest on other logs in a stable manner and must extend beyond the stake, bunk, bolster or standard.

(3) The center of the highest outside log on each side or end must be below the top of each stake, bunk or standard.

(4) Each log that is not held in place by contact with other logs or the stakes, bunks, or standards must be held in place by a tiedown. Additional tiedowns or securement devices must be used when the condition of the wood results in such low friction between logs that they are likely to slip upon each other.

(d) *Securement of shortwood logs loaded crosswise on frame, rail and flatbed vehicles.* In addition to the requirements of paragraphs (b) and (c) of this section, each stack of logs loaded crosswise must meet the following rules:

(1) In no case may the end of a log in the lower tier extend more than one-third of the log's total length beyond the nearest supporting structure on the vehicle.

(2) When only one stack of shortwood is loaded crosswise, it must be secured with at least two tiedowns. The tiedowns must attach to the vehicle frame at the front and rear of the load, and must cross the load in this direction.

(3) When two tiedowns are used, they must be positioned at approximately one-third and two-thirds of the length of the logs.

(4) A vehicle that is more than 10 meters (33 feet) long must be equipped with center stakes, or comparable devices, to divide it into sections approximately equal in length. Where a vehicle is so divided, each tiedown must secure the highest log on each side of the center stake, and must be fastened below these logs. It may be fixed at each end and tensioned from the middle, or fixed in the middle and tensioned from each end, or it may pass through a pulley or equivalent device in the middle and be tensioned from one end.

(5) Any structure or stake that is subjected to an upward force when the tiedowns are tensioned must be anchored to resist that force.

(6) If two stacks of shortwood are loaded side-by-side, in addition to meeting the requirements of paragraphs (d)(1) through (d)(5) of this section, they must be loaded so that:

(i) There is no space between the two stacks of logs;

(ii) The outside of each stack is raised at least 2.5 cm (1 in) within 10 cm (4 in) of the end of the logs or the side of the vehicle;

(iii) The highest log is no more than 2.44 m (8 ft) above the deck; and

(iv) At least one tiedown is used lengthwise across each stack of logs.

(e) *Securement of logs loaded lengthwise on flatbed and frame vehicles.* In addition to meeting the requirements of paragraphs (b) and (c) of this section, each stack of shortwood loaded lengthwise on a frame vehicle or on a flatbed must be secured to the vehicle by at least two tiedowns.

(f) *Securement of logs transported on pole trailers.* (1) The load must be secured by at least one tiedown at each bunk, or alternatively, by at least two tiedowns used as wrappers that encircle the entire load at locations along the load that provide effective securement.

(2) The front and rear wrappers must be at least 3.04 meters (10 feet) apart.

(3) Large diameter single and double log loads must be immobilized with chock blocks or other equivalent means to prevent shifting.

(4) Large diameter logs that rise above bunks must be secured to the underlying load with at least two additional wrappers.

§ 393.118 What are the rules for securing dressed lumber or similar building products?

(a) *Applicability.* The rules in this section apply to the transportation of bundles of dressed lumber, packaged lumber, building products such as plywood, gypsum board or other materials of similar shape. Lumber or building products which are not bundled or packaged must be treated as loose items and transported in accordance with §§ 393.100 through 393.114 of this subpart. For the purpose of this section, ''bundle'' refers to packages of lumber, building materials or similar products which are unitized for securement as a single article of cargo.

(b) *Positioning of bundles.* Bundles must be placed side by side in direct contact with each other, or a means must be provided to prevent bundles from shifting towards each other.

(c) *Securement of bundles transported using no more than one tier.* Bundles carried on one tier must be secured in accordance with the general provisions of §§ 393.100 through 393.114.

(d) *Securement of bundles transported using more than one tier.* Bundles carried in more than one tier must be either:

(1) Blocked against lateral movement by stakes on the sides of the vehicle and secured by tiedowns laid out over the top tier, as outlined in the general provisions of §§ 393.100 through 393.114; or

(2) Restrained from lateral movement by blocking or high friction devices between tiers and secured by tiedowns laid out over the top tier, as outlined in the general provisions of §§ 393.100 through 393.114; or

(3) Placed directly on top of other bundles or on spacers and secured in accordance with the following:

(i) The length of spacers between bundles must provide support to all pieces in the bottom row of the bundle.

(ii) The width of individual spacers must be equal to or greater than the height.

(iii) If spacers are comprised of layers of material, the layers must be unitized or fastened together in a manner which ensures that the spacer performs as a single piece of material.

(iv) The arrangement of the tiedowns for the bundles must be:

(A) Secured by tiedowns over the top tier of bundles, in accordance with the general provisions of §§ 393.100 through 393.114 with a minimum of two tiedowns for bundles longer than 1.52 meters (5 ft); and

(B) Secured by tiedowns in accordance with the general provisions of §§ 393.100 through 393.114 over the second tier or over a middle tier of a maximum height of 1.85 meters (6 ft) above the trailer deck, whichever is greater, for each stack of bundles composed of more than two tiers; or

(4) Secured by tiedowns over each tier of bundles, in accordance with §§ 393.100 through 393.114 using a minimum of two tiedowns over each of the top bundles longer than 1.52 meters (5 ft), in all circumstances.

§ 393.120 What are the rules for securing metal coils?

(a) *Applicability.* The rules in this section apply to the transportation of one or more metal coils which, individually or grouped together, weigh 2268 kg (5000 pounds) or more. Shipments of metal coils that weigh less than 2268 kg (5000 pounds) may be secured in accordance with the provisions of §§ 393.100 through 393.114.

(b) *Securement of coils transported with eyes vertical on a flatbed vehicle, in a sided vehicle or intermodal container with anchor points*—(1) *An individual coil.* Each coil must be secured by tiedowns arranged in a manner to prevent the coils from tipping in the forward, rearward, and lateral directions. The restraint system must include the following:

(i) At least one tiedown attached diagonally from the left side of the vehicle or intermodal container (near the forwardmost part of the coil), across the eye of the coil, to the right side of the vehicle or intermodal container (near the rearmost part of the coil);

(ii) At least one tiedown attached diagonally from the right side of the vehicle or intermodal container (near the forwardmost part of the coil), across the eye of the coil, to the left side of the vehicle or intermodal container (near the rearmost part of the coil);

(iii) At least one tiedown attached transversely over the eye of the coil; and

(iv) Either blocking and bracing, friction mats or tiedowns must be used to prevent longitudinal movement in the forward direction.

(2) *Coils grouped in rows.* When coils are grouped and loaded side by side in a transverse or longitudinal row, the each row of coils must be secured by the following:

(i) At least one tiedown attached to the front of the row of coils, restraining against forward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(ii) At least one tiedown attached to the rear of the row of coils, restraining against rearward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iii) At least one tiedown over the top of each coil or transverse row of coils, restraining against vertical motion. Tiedowns going over the top of a coil(s) must be as close as practicable to the eye of the coil and positioned to prevent the tiedown from slipping or becoming unintentionally unfastened while the vehicle is in transit; and

(iv) Tiedowns must be arranged to prevent shifting or tipping in the forward, rearward and lateral directions.

(c) *Securement of coils transported with eyes crosswise on a flatbed vehicle, in a sided vehicle or intermodal container with anchor points*—(1) *An individual coil.* Each coil must be secured by the following:

(i) A means (*e.g.*, timbers, chocks or wedges, a cradle, etc.) to prevent the coil from rolling. The means of preventing rolling must support the coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one tiedown through its eye, restricting against forward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container; and

(iii) At least one tiedown through its eye, restricting against rearward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container.

(2) *Prohibition on crossing of tiedowns when coils are transported with eyes crosswise.* Attaching tiedowns diagonally through the eye of a coil to form an X-pattern when viewed from above the vehicle is prohibited.

(d) *Securement of coils transported with eyes lengthwise on a flatbed vehicle, in a sided vehicle or intermodal container with anchor points*—(1) *An individual coil-option 1.* Each coil must be secured by:

(i) A means (*e.g.*, timbers, chocks or wedges, a cradle, etc.) to prevent the coil from rolling. The means of preventing rolling must support the coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one tiedown attached diagonally through its eye from the left side of the vehicle or intermodal container (near the forward-most part of the coil), to the right side of the vehicle or intermodal container (near the rearmost part of the coil), making an angle no more than 45 degrees, whenever practicable, with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iii) At least one tiedown attached diagonally through its eye, from the right side of the vehicle or intermodal container (near the forward-most part of the coil), to the left side of the vehicle or intermodal container (near the rearmost part of the coil), making an angle no more than 45 degrees, whenever practicable, with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iv) At least one tiedown attached transversely over the top of the coil; and

(v) Either blocking, or friction mats to prevent longitudinal movement.

(2) *An individual coil—option 2.* Each coil must be secured by:

(i) A means (*e.g.*, timbers, chocks or wedges, a cradle, etc.) to prevent the coil from rolling. The means of preventing rolling must support the coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one tiedown attached straight through its eye from the left side of the vehicle or intermodal container (near the forward-most part of the coil), to the left side of the vehicle or intermodal container (near the rearmost part of the coil), and, whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iii) At least one tiedown attached straight through its eye, from the right side of the vehicle or intermodal container (near the forward-most part of the coil), to the right side of the vehicle or intermodal container (near the rearmost part of the coil), and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iv) At least one tiedown attached transversely over the top of the coil; and

(v) Either blocking or friction mats to prevent longitudinal movement.

(3) *An individual coil—option 3.* Each coil must be secured by:

(i) A means (*e.g.*, timbers, chocks or wedges, a cradle, etc.) to prevent the coil from rolling. The means of preventing rolling must support the coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one tiedown over the top of the coil, located near the forward-most part of the coil;

(iii) At least one tiedown over the top of the coil located near the rearmost part of the coil; and

(iv) Either blocking or friction mats to prevent longitudinal movement.he forward direction.

(4) *Rows of coils.* Each transverse row of coils having approximately equal outside diameters must be secured with:

(i) A means (*e.g.*, timbers, chocks or wedges, a cradle, etc.) to prevent each coil in the row of coils from rolling. The means of preventing rolling must support each coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one tiedown over the top of each coil or transverse row, located near the forward-most part of the coil;

(iii) At least one tiedown over the top of each coil or transverse row, located near the rearmost part of the coil; and

(iv) Either blocking, bracing or friction mats to prevent longitudinal movement.

(e) *Securement of coils transported in a sided vehicle without anchor points or an intermodal container without anchor points.* Metal coils transported in a vehicle with sides without anchor points or an intermodal container without anchor points must be loaded in a manner to prevent shifting and tipping. The coils may also be secured using a system of blocking and bracing, friction mats, tiedowns, or a combination of these to prevent any horizontal movement and tipping.

§ 393.122 What are the rules for securing paper rolls?

(a) *Applicability.* The rules in this section apply to shipments of paper rolls which, individually or together, weigh 2268 kg (5000 lb) or more. Shipments of paper rolls that weigh less than 2268 kg (5000 lb), and paper rolls that are unitized on a pallet, may either be secured in accordance with the rules in this section or the requirements of §§ 393.100 through 393.114.

(b) *Securement of paper rolls transported with eyes vertical in a sided vehicle.* (1) Paper rolls must be placed tightly against the walls of the vehicle, other paper rolls, or other cargo, to prevent movement during transit.

(2) If there are not enough paper rolls in the shipment to reach the walls of the vehicle, lateral movement must be prevented by filling the void, blocking, bracing, tiedowns or friction mats. The paper rolls may also be banded together.

(3) When any void behind a group of paper rolls, including that at the rear of the vehicle, exceeds the diameter of the paper rolls, rearward movement must be prevented by friction mats, blocking,

bracing, tiedowns, or banding to other rolls.

(4)(i) If a paper roll is not prevented from tipping or falling sideways or rearwards by vehicle structure or other cargo, and its width is more than 2 times its diameter, it must be prevented from tipping or falling by banding it to other rolls, bracing, or tiedowns.

(ii) If the forwardmost roll(s) in a group of paper rolls is not prevented from tipping or falling forwards by vehicle structure or other cargo and it is restrained against forward movement by friction mat(s) alone, and its width is more than 1.75 times its diameter, it must be prevented from tipping or falling forwards by banding it to other rolls, bracing, or tiedowns.

(iii) Otherwise, when a paper roll or the forwardmost roll in groups of rolls that are not prevented from tipping or falling forwards by vehicle structure or other cargo and its width exceeds 1.25 times its diameter it must be prevented from tipping or falling by banding it to other rolls, bracing or tiedowns.

(5) If paper rolls are banded together, the rolls must be placed tightly against each other to form a stable group. The bands must be applied tightly, and must be secured so that they cannot fall off the rolls or to the deck.

(6) A friction mat used to provide the principal securement for a paper roll must protrude from beneath the roll in the direction in which it is providing that securement.

(c) *Securement of split loads of paper rolls transported with eyes vertical in a sided vehicle.* (1) If a paper roll in a split load is not prevented from forward movement by vehicle structure or other cargo, it must be prevented from forward movement by filling the open space, or by blocking, bracing, tiedowns, friction mats, or some combination of these.

(2) A friction mat used to provide the principal securement for a paper roll must protrude from beneath the roll in the direction in which it is providing that securement.

(d) *Securement of stacked loads of paper rolls transported with eyes vertical in a sided vehicle.* (1) Paper rolls must not be loaded on a layer of paper rolls beneath unless the lower layer extends to the front of the vehicle.

(2) Paper rolls in the second and subsequent layers must be prevented from forward, rearward or lateral movement by means as allowed for the bottom layer, or by use of a blocking roll from a lower layer.

(3) The blocking roll must be at least 38 mm (1.5 in) taller than other rolls, or must be raised at least 38 mm (1.5 in) using dunnage.

(4) A roll in the rearmost row of any layer must not be raised using dunnage.

(e) *Securement of paper rolls transported with eyes crosswise in a sided vehicle.* (1) The paper rolls must be prevented from rolling or shifting longitudinally by contact with vehicle structure or other cargo, by chocks, wedges or blocking and bracing of adequate size, or by tiedowns.

(2) Chocks, wedges or blocking must be held securely in place by some means in addition to friction, so they cannot become unintentionally unfastened or loose while the vehicle is in transit.

(3) The rearmost roll must not be secured using the rear doors of the vehicle or intermodal container, or by blocking held in place by those doors.

(4) If there is more than a total of 203 mm (8 in) of space between the ends of a paper roll, or a row of rolls, and the walls of the vehicle, void fillers, blocking, bracing, friction mats, or tiedowns must be used to prevent the roll from shifting towards either wall.

(f) *Securement of stacked loads of paper rolls transported with eyes crosswise in a sided vehicle.* (1) Rolls must not be loaded in a second layer unless the bottom layer extends to the front of the vehicle.

(2) Rolls must not be loaded in a third or higher layer unless all wells in the layer beneath are filled.

(3) The foremost roll in each upper layer, or any roll with an empty well in front of it, must be secured against forward movement by:

(i) Banding it to other rolls, or

(ii) Blocking against an adequately secured eye-vertical blocking roll resting on the floor of the vehicle which is at least 1.5 times taller than the diameter of the roll being blocked, or

(iii) Placing it in a well formed by two rolls on the lower row whose diameter is equal to or greater than that of the roll on the upper row.

(4) The rearmost roll in each upper layer must be secured by banding it to other rolls if it is located in either of the last two wells formed by the rearmost rolls in the layer below.

(5) Rolls must be secured against lateral movement by the same means allowed for the bottom layer when there is more than a total of 203 mm (8 in) of space between the ends of a paper roll, or a row of rolls, and the walls of the vehicle.

(g) *Securement of paper rolls transported with the eyes lengthwise in a sided vehicle.*

(1) Each roll must be prevented from forward movement by contact with vehicle structure, other cargo, blocking or tiedowns.

(2) Each roll must be prevented from rearward movement by contact with other cargo, blocking, friction mats or tiedowns.

(3) The paper rolls must be prevented from rolling or shifting laterally by contact with the wall of the vehicle or other cargo, or by chocks, wedges or blocking of adequate size.

(4) Chocks, wedges or blocking must be held securely in place by some means in addition to friction, so they cannot become unintentionally unfastened or loose while the vehicle is in transit.

(h) *Securement of stacked loads of paper rolls transported with the eyes lengthwise in a sided vehicle.* (1) Rolls must not be loaded in a higher layer if another roll will fit in the layer beneath.

(2) An upper layer must be formed by placing paper rolls in the wells formed by the rolls beneath.

(3) A roll in an upper layer must be secured against forward and rearward movement by any of the means allowed for the bottom layer, by use of a blocking roll, or by banding to other rolls.

(i) *Securement of paper rolls transported on a flatbed vehicle or in a curtain-sided vehicle*—(1) *Paper rolls with eyes vertical or with eyes lengthwise.*

(i) The paper rolls must be loaded and secured as described for a sided vehicle, and the entire load must be secured by tiedowns in accordance with the requirements of §§ 393.100 through 393.114.

(ii) Stacked loads of paper rolls with eyes vertical are prohibited.

(2) *Paper rolls with eyes crosswise.* (i) The paper rolls must be prevented from rolling or shifting longitudinally by contact with vehicle structure or other cargo, by chocks, wedges or blocking and bracing of adequate size, or by tiedowns.

(ii) Chocks, wedges or blocking must be held securely in place by some means in addition to friction so that they cannot become unintentionally unfastened or loose while the vehicle is in transit.

(iii) Tiedowns must be used in accordance with the requirements of §§ 393.100 through 393.114 to prevent lateral movement.

§ 393.124 What are the rules for securing concrete pipe?

(a) *Applicability.* (1) The rules in this section apply to the transportation of concrete pipe on flatbed trailers and vehicles, and lowboy trailers.

(2) Concrete pipe bundled tightly together into a single rigid article that has no tendency to roll, and concrete

pipe loaded in a sided vehicle or container must be secured in accordance with the provisions of §§ § 393.100 through 393.114.

(b) *General specifications for tiedowns.* (1) The aggregate working load limit of all tiedowns on any group of pipes must not be less than half the total weight of all the pipes in the group.

(2) A transverse tiedown through a pipe on an upper tier or over longitudinal tiedowns is considered to secure all those pipes beneath on which that tiedown causes pressure.

(c) *Blocking.* (1) Blocking may be one or more pieces placed symmetrically about the center of a pipe.

(2) One piece must extend at least half the distance from the center to each end of the pipe, and two pieces must be placed on the opposite side, one at each end of the pipe.

(3) Blocking must be placed firmly against the pipe, and must be secured to prevent it moving out from under the pipe.

(4) Timber blocking must have minimum dimensions of at least 10×15 cm (4×6 in).

(d) *Arranging the load*—(1) *Pipe of different diameter.* If pipe of more than one diameter are loaded on a vehicle, groups must be formed that consist of pipe of only one size, and each group must be separately secured.

(2) *Arranging a bottom tier.* The bottom tier must be arranged to cover the full length of the vehicle, or as a partial tier in one group or two groups.

(3) *Arranging an upper tier.* Pipe must be placed only in the wells formed by adjacent pipes in the tier beneath. A third or higher tier must not be started unless all wells in the tier beneath are filled.

(4) *Arranging the top tier.* The top tier must be arranged as a complete tier, a partial tier in one group, or a partial tier in two groups.

(5) *Arranging bell pipe.* (i) Bell pipe must be loaded on at least two longitudinal spacers of sufficient height to ensure that the bell is clear of the deck.

(ii) Bell pipe loaded in one tier must have the bells alternating on opposite sides of the vehicle.

(iii) The ends of consecutive pipe must be staggered, if possible, within the allowable width, otherwise they must be aligned.

(iv) Bell pipe loaded in more than one tier must have the bells of the bottom tier all on the same side of the vehicle.

(v) Pipe in every upper tier must be loaded with bells on the opposite side of the vehicle to the bells of the tier below.

(vi) If the second tier is not complete, pipe in the bottom tier which do not support a pipe above must have their bells alternating on opposite sides of the vehicle.

(a) *Securing pipe with an inside diameter up to 1,143 mm (45 in).* In addition to the requirements of paragraphs (b), (c) and (d) of this section, the following rules must be satisfied:

(1) *Stabilizing the bottom tier.* (i) The bottom tier must be immobilized longitudinally at each end by blocking, vehicle end structure, stakes, a locked pipe unloader, or other equivalent means.

(ii) Other pipe in the bottom tier may also be held in place by blocks and/or wedges; and

(iii) Every pipe in the bottom tier must also be held firmly in contact with the adjacent pipe by tiedowns though the front and rear pipes:

(A) At least one tiedown through the front pipe of the bottom tier must run aft at an angle not more than 45 degrees with the horizontal, whenever practicable.

(B) At least one tiedown through the rear pipe of the bottom tier must run forward at an angle not more than 45 degrees with the horizontal, whenever practicable.

(2) *Use of tiedowns.* (i) Each pipe may be secured individually with tiedowns through the pipe.

(ii) If each pipe is not secured individually with a tiedown, then:

(A) Either one 1/2-inch diameter chain or wire rope, or two 3/8-inch diameter chain or wire rope, must be placed longitudinally over the group of pipes;

(B) One transverse tiedown must be used for every 3.04 m (10 ft) of load length. The transverse tiedowns may be placed through a pipe, or over both longitudinal tiedowns between two pipes on the top tier.

(C) If the first pipe of a group in the top tier is not placed in the first well formed by pipes at the front of the tier beneath, it must be secured by an additional tiedown that runs rearward at an angle not more than 45 degrees to the horizontal, whenever practicable. This tiedown must pass either through the front pipe of the upper tier, or outside it and over both longitudinal tiedowns; and

(D) If the last pipe of a group in the top tier is not placed in the last well formed by pipes at the rear of the tier beneath, it must be secured by an additional tiedown that runs forward at an angle not more than 45 degrees to the horizontal, whenever practicable. This tiedown must pass either through the rear pipe of the upper tier or outside it and over both longitudinal tiedowns.

(f) *Securing large pipe, with an inside diameter over 1143 mm (45 in).* In addition to the requirements of paragraphs (b), (c) and (d) of this section, the following rules must be satisfied:

(1) The front pipe and the rear pipe must be immobilized by blocking, wedges, vehicle end structure, stakes, locked pipe unloader, or other equivalent means.

(2) Each pipe must be secured by tiedowns through the pipe:

(i) At least one tiedown through each pipe in the front half of the load, which includes the middle one if there is an odd number, and must run rearward at an angle not more than 45 degrees with the horizontal, whenever practicable.

(ii) At least one tiedown through each pipe in the rear half of the load, and must run forward at an angle not more than 45 degrees with the horizontal, whenever practicable, to hold each pipe firmly in contact with adjacent pipe; and

(iii) If the front or rear pipe is not also in contact with vehicle end structure, stakes, a locked pipe unloader, or other equivalent means, at least two tiedowns positioned as described in paragraphs (f)(2)(i) and (ii) of this section, must be used through that pipe.

(3) If only one pipe is transported, or if several pipes are transported without contact between other pipes, the requirements in this paragraph apply to each pipe as a single front and rear article.

§ 393.126 What are the rules for securing intermodal containers?

(a) Applicability. The rules in this section apply to the transportation of intermodal containers. Cargo contained within an intermodal container must be secured in accordance with the provisions of §§ 393.100 through 393.114 or, if applicable, the commodity specific rules of this part.

(b) *Securement of intermodal containers transported on container chassis vehicle(s).* (1) Each intermodal container must be secured to the container chassis with securement devices or integral locking devices that cannot unintentionally become unfastened while the vehicle is in transit.

(2) The securement devices must restrain the container from moving more than 1.27 cm (1/2 in) forward, more than 1.27 cm (1/2 in) aft, more than 1.27 cm (1/2 in) to the right, more than 1.27 cm (1/2 in) to the left, or more than 2.54 cm (1 in) vertically.

(3) The front and rear of the container must be secured independently.

(c) *Securement of loaded intermodal containers transported on vehicles other than container chassis vehicle(s).* (1) All lower corners of the intermodal container must rest upon the vehicle, or the corners must be supported by a structure capable of bearing the weight of the container and that support structure must be independently secured to the motor vehicle.

(2) Each container must be secured to the vehicle by:

(i) Chains, wire ropes or integral devices which are fixed to all lower corners; or

(ii) Crossed chains which are fixed to all upper corners; and,

(3) The front and rear of the container must be secured independently. Each chain, wire rope, or integral locking device must be attached to the container in a manner that prevents it from being unintentionally unfastened while the vehicle is in transit.

(d) *Securement of empty intermodal containers transported on vehicles other than container chassis vehicle(s).* Empty intermodal containers transported on vehicles other than container chassis vehicles do not have to have all lower corners of the intermodal container resting upon the vehicle, or have all lower corners supported by a structure capable of bearing the weight of the empty container, provided:

(1) The empty intermodal container is balanced and positioned on the vehicle in a manner such that the container is stable before the addition of tiedowns or other securement equipment; and,

(2) The amount of overhang for the empty container on the trailer does not exceed five feet on either the front or rear of the trailer;

(3) The empty intermodal container must not interfere with the vehicle's maneuverability; and,

(4) The empty intermodal container is secured to prevent lateral, longitudinal, or vertical shifting.

§ 393.128 What are the rules for securing automobiles, light trucks and vans?

(a) *Applicability.* The rules in this section apply to the transportation of automobiles, light trucks, and vans which individually weigh 4,536 kg. (10,000 lb) or less. Vehicles which individually are heavier than 4,536 kg (10,000 lb) must be secured in accordance with the provisions of § 393.130 of this part.

(b) *Securement of automobiles, light trucks, and vans.*

(1) Automobiles, light trucks, and vans must be restrained at both the front and rear to prevent lateral, forward, rearward, and vertical movement using a minimum of two tiedowns.

(2) Tiedowns that are designed to be affixed to the structure of the automobile, light truck, or van must use the mounting points on those vehicles that have been specifically designed for that purpose.

(3) Tiedowns that are designed to fit over or around the wheels of an automobile, light truck, or van must provide restraint in the lateral, longitudinal and vertical directions.

(4) Edge protectors are not required for synthetic webbing at points where the webbing comes in contact with the tires.

§ 393.130 What are the rules for securing heavy vehicles, equipment and machinery?

(a) *Applicability.* The rules in this section apply to the transportation of heavy vehicles, equipment and machinery which operate on wheels or tracks, such as front end loaders, bulldozers, tractors, and power shovels and which individually weigh 4,536 kg (10,000 lb.) or more. Vehicles, equipment and machinery which is lighter than 4,536 kg (10,000 lb.) may also be secured in accordance with the provisions of this section, with § 393.128, or in accordance with the provisions of §§ 393.100 through 393.114.

(b) *Preparation of equipment being transported.* (1) Accessory equipment, such as hydraulic shovels, must be completely lowered and secured to the vehicle.

(2) Articulated vehicles shall be restrained in a manner that prevents articulation while in transit.

(c) *Securement of heavy vehicles, equipment or machinery with crawler tracks or wheels.* (1) In addition to the requirements of paragraph (b) of this section, heavy equipment or machinery with crawler tracks or wheels must be restrained against movement in the lateral, forward, rearward, and vertical direction using a minimum of four tiedowns.

(2) Each of the tiedowns must be affixed as close as practicable to the front and rear of the vehicle, or mounting points on the vehicle that have been specifically designed for that purpose.

§ 393.132 What are the rules for securing flattened or crushed vehicles?

(a) *Applicability.* The rules in this section apply to the transportation of vehicles such as automobiles, light trucks, and vans that have been flattened or crushed.

(b) *Prohibition on the use of synthetic webbing.* The use of synthetic webbing to secure flattened or crushed vehicles is prohibited.

(c) *Securement of flattened or crushed vehicles.* Flattened or crushed vehicles must be transported on vehicles which have:

(1) Containment walls or comparable means on four sides which extend to the full height of the load and which block against movement of the cargo in the forward, rearward and lateral directions; or

(2)(i) Containment walls or comparable means on three sides which extend to the full height of the load and which block against movement of the cargo in the forward, rearward and the lateral direction for which there is no containment wall or comparable means, and

(ii) A minimum of two tiedowns are required per vehicle stack; or

(3)(i) Containment walls on two sides which extend to the full height of the load and which block against movement of the cargo in the forward and rearward directions, and

(ii) A minimum of three tiedowns are required per vehicle stack; or

(4) A minimum of four tiedowns per vehicle stack.

(5) In addition to the requirements of paragraphs (c)(2), (3), and (4), the following rules must be satisfied:

(i) Vehicles used to transport flattened or crushed vehicles must be equipped with a means to prevent loose parts from falling from all four sides of the vehicle which extends to the full height of the cargo.

(ii) The means used to contain loose parts may consist of structural walls, sides or sideboards, or suitable covering material, alone or in combinations.

(iii) The use of synthetic material for containment of loose parts is permitted.

§ 393.134 What are the rules for securing roll-on/roll-off or hook lift containers?

(a) *Applicability.* The rules in this section apply to the transportation of roll-on/roll-off or hook lift containers.

(b) *Securement of a roll-on/roll-off and hook lift container.* Each roll-on/roll-off and hook lift container carried on a vehicle which is not equipped with an integral securement system must be:

(1) Blocked against forward movement by the lifting device, stops, a combination of both or other suitable restraint mechanism;

(2) Secured to the front of the vehicle by the lifting device or other suitable restraint against lateral and vertical movement;

(3) Secured to the rear of the vehicle with at least one of the following mechanisms:

(i) One tiedown attached to both the vehicle chassis and the container chassis;

(ii) Two tiedowns installed lengthwise, each securing one side of the container to one of the vehicle's side rails; or

(iii) Two hooks, or an equivalent mechanism, securing both sides of the container to the vehicle chassis at least as effectively as the tiedowns in the two previous items.

(4) The mechanisms used to secure the rear end of a roll-on/roll off or hook lift container must be installed no more than two meters (6 ft 7 in) from the rear of the container.

(5) In the event that one or more of the front stops or lifting devices are missing, damaged or not compatible, additional manually installed tiedowns must be used to secure the container to the vehicle, providing the same level of securement as the missing, damaged or incompatible components.

§ 393.136 What are the rules for securing large boulders?

(a) *Applicability.* (1) The rules in this section are applicable to the transportation of any large piece of natural, irregularly shaped rock weighing in excess of 5,000 kg (11,000 lb.) or with a volume in excess of 2 cubic-meters on an open vehicle, or in a vehicle whose sides are not designed and rated to contain such cargo.

(2) Pieces of rock weighing more than 100 kg (220 lb.), but less than 5,000 kg (11,000 lb.) must be secured, either in accordance with this section, or in accordance with the provisions of §§ 393.100 through 393.114, including:

(i) Rock contained within a vehicle which is designed to carry such cargo; or

(ii) Secured individually by tiedowns, provided each piece can be stabilized and adequately secured.

(3) Rock which has been formed or cut to a shape and which provides a stable base for securement must also be secured, either in accordance with the provisions of this section, or in accordance with the provisions of §§ 393.100 through 393.114.

(b) *General requirements for the positioning of boulders on the vehicle.* (1) Each boulder must be placed with its flattest and/or largest side down.

(2) Each boulder must be supported on at least two pieces of hard wood blocking at least 10 cm × 10 cm (4 inches × 4 inches) side dimensions extending the full width of the boulder.

(3) Hardwood blocking pieces must be placed as symmetrically as possible under the boulder and should support at least three-fourths of the length of the boulder.

(4) If the flattest side of a boulder is rounded or partially rounded, so that the boulder may roll, it must be placed in a crib made of hardwood timber fixed to the deck of the vehicle so that the boulder rests on both the deck and the timber, with at least three well-separated points of contact that prevent its tendency to roll in any direction.

(5) If a boulder is tapered, the narrowest end must point towards the front of the vehicle.

(c) *General tiedown requirements.* (1) Only chain may be used as tiedowns to secure large boulders.

(2) Tiedowns which are in direct contact with the boulder should, where possible, be located in valleys or notches across the top of the boulder, and must be arranged to prevent sliding across the rock surface.

(d) *Securement of a cubic shaped boulder.* In addition to the requirements of paragraphs (b) and (c) of this section, the following rules must be satisfied:

(1) Each boulder must be secured individually with at least two chain tiedowns placed transversely across the vehicle.

(2) The aggregate working load limit of the tiedowns must be at least half the weight of the boulder.

(3) The tiedowns must be placed as closely as possible to the wood blocking used to support the boulder.

(e) *Securement of a non-cubic shaped boulder—with a stable base.* In addition to the requirements of paragraphs (b) and (c) of this section, the following rules must be satisfied:

(1) The boulder must be secured individually with at least two chain tiedowns forming an ''X'' pattern over the boulder.

(2) The aggregate working load limit of the tiedowns must be at least half the weight of the boulder.

(3) The tiedowns must pass over the center of the boulder and must be attached to each other at the intersection by a shackle or other connecting device.

(f) *Securement of a non-cubic shaped boulder—with an unstable base.* In addition to the requirements of paragraphs (b) and (c) of this section, each boulder must be secured by a combination of chain tiedowns as follows:

(1) One chain must surround the top of the boulder (at a point between one-half and two-thirds of its height). The working load limit of the chain must be at least half the weight of the boulder.

(2) Four chains must be attached to the surrounding chain and the vehicle to form a blocking mechanism which prevents any horizontal movement. Each chain must have a working load limit of at least one-fourth the weight of the boulder. Whenever practicable, the angle of the chains must not exceed 45 degrees from the horizontal.

Issued on: September 8, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–23693 Filed 9–26–02; 8:45 am]

BILLING CODE 4910–EX–P

Federal Register

Friday,

September 27, 2002

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 119

Reports by Carriers on Incidents Involving Animals During Air Transport; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 119

[Docket No. FAA–2002–13378; Notice No. 02–14]

RIN 2120–AH55

Reports by Carriers on Incidents Involving Animals During Air Transport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action implements Section 710 the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) by requiring air carriers that provide scheduled passenger air transportation to submit monthly to the Secretary of Transportation, through the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), a report on any incidents involving the loss, injury or death of an animal during air transport provided by the air carrier.

DATES: Send your comments on or before October 28, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13378 at the beginning of your comments, and your should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: James W. Whitlow, Office of the Chief Counsel, AGC–2, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3222; facsimile (202) 267–3227.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with DOT personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received, on or before the closing date, will be considered by FAA before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2002–13378.'' The postcard will be date stamped and mailed to the commenter.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search)*.

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

Background

Section 710 of AIR–21 (Public Law 106–181) added section 41721 to chapter 417 of Title 49 U.S.C. Section 41721(b) mandates that air carriers report to the Secretary of Transportation on a monthly basis about any incidents involving the loss, injury or death of an animal during air transportation. Section 41721(c) directs the Secretary of Transportation and the Secretary of Agriculture to enter into a memorandum of understanding to ensure the sharing of the information contained in these reports. Section 41721(d) directs the Secretary of Transportation to publish data on incidents and complaints involving the loss, injury, or death of an animal during air transport in a manner comparable to other consumer complaint and incident data.

General Discussion of the Proposals

This action will amend 14 CFR part 119 to establish the requirement that air carriers submit monthly reports on the loss, injury or death of an animal during air transport to the Secretary of Transportation, through APHIS; and specify the type and manner of information that air carriers must submit to APHIS in order to comply with Section 41721(a). APHIS will process the reports and forward the relevant information to the Office of Aviation Enforcement and Proceedings (OAEP) for publication on a monthly basis in the Air Travel Consumer Report.

Section-by-Section Discussion of the Proposals

Section 119.72(a) establishes that all air carriers that provide scheduled passenger air transportation must submit reports to APHIS within 15 days of the end of the month to which the information applies in order to comply with the animal incident reporting requirement of AIR–21.

Section 119.72(b) specifies the minimal information that air carriers must report, and vests APHIS with the authority to establish the form and manner for filing the reports.

Section 119.72(c) clarifies the meaning of the term ''air transport'' by incorporating the statutory definition contained in AIR–21, and defines ''animal'' to mean any warm or cold-blooded pet.

Paperwork Reduction Act

This proposal contains a new information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Transportation has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Reports by Carriers on Incidents Involving Animals During Air Transport.

Summary: This proposal implements the requirement that air carriers report on incidents involving the loss, injury or death of an animal during air transport, as mandated by Section 710 of Public Law 106–181, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21).

Use of: This proposal will support the information needs of the Office of Aviation Enforce and Proceedings (OAEP), Department of Transportation, and the Animal & Plant Health Inspection Service (APHIS), Department Agriculture. The information will be published by OAEP on a monthly basis in the Air Travel Consumer Report after it has been processed by the Animal & Plant Health Inspection Service, United States Department of Agriculture.

Respondents (including number of): The likely respondents to this proposed information requirement are air carriers who provided scheduled passenger air transportation; approximately 40.

Frequency: The reports will be submitted on a monthly basis.

Annual Burden Estimate: This proposal would result in no significant annual recordkeeping or reporting burden because the air carriers covered by the reporting requirements are currently required to submit similar reports to the Bureau of Transportation Statistics, Department of Transportation. In addition, only carriers that are actually involved in an animal incident will have to file a report.

The agency is soliciting comments to—

(1) evaluate whether the proposed information requirement is necessary for the proper implementation of Section 710 of AIR–21;

(2) evaluate the accuracy of the Agency's estimate of the burden;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by October 28, 2002, and should direct them to the address listed in the **ADDRESSES** section of the document. Comments also should be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, Attention: Desk Officer for the Federal Aviation Administration, DOT.

According to the regulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register** after the Office of Management and Budget approves it.

Executive Order 12866, Regulatory Planning and Review, directs FAA to assess both the costs and benefits of a regulatory change. FAA is not allowed to propose or adopt a regulation unless it makes a reasoned determination that the benefits of the intended regulation justify the costs. FAA's assessment of this rulemaking indicates that its economic impact is minimal. Since its costs and benefits do not make it a ''significant regulatory action'' as defined in the Order, FAA has not prepared a ''regulatory evaluation'' which is the written cost/benefit analysis ordinarily required for all rulemaking under the DOT Regulatory Policies and Procedures. The latter analysis is unnecessary where the economic impact of a rule is minimal.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analysis, FAA has determined this rule (1) has benefits which do justify its costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will not affect barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 602–612, directs Federal agencies to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdiction subject to the regulation. Federal agencies are required to determine whether a proposed or final action will have a ''significant economic impact on a substantial number of small entities'' as defined in the Act. If an agency finds that the action will have a significant impact, it must do a ''regulatory flexibility analysis.''

This proposed rule imposes an insignificant reporting requirement on air carrier; therefore, FAA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activity that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services to into the U.S.

In accordance with the above statute and policy, FAA has assessed the potential effect of this rulemaking and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This notice does not contain such a mandate. Therefore, the requirements of Title Ii of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

FAA analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. It determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has concluded that this notice of proposed rulemaking does not have federalism implications.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). FAA has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Animal incidents, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

1. The authority citation for part 119 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 41721, 44105, 44106, 44111, 44701–44717, 44772, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

2. Section 119.72 is added to subpart C to read as follows:

§ 119.72 Reports by air carriers on incidents involving animals during air transport.

(a) Any air carrier that provides scheduled passenger air transportation shall, within 15 days of the end of the month to which the information applies, submit to the Animal and Plant Health Inspection Service, United States Department of Agriculture, a report on any incidents involving the loss, injury, or death of an animal during air transport provided by the air carrier.

(b) The report shall be made in the form and manner set forth in reporting directives issued by the Animal and Plant Health Inspection Service, and shall contain the following information:

(1) Carrier and flight number;

(2) Date and time of the incident;

(3) Description of the animal, including name, if applicable;

(4) Identification of the owner(s) and/or guardian of the animal;

(5) Narrative description of the incident;

(6) Narrative description of the cause of the incident;

(7) Narrative description of any corrective action taken in response to the incident; and

(8) Name, title, address, and telephone number of the individual filing the report on behalf of the air carrier.

(c) For purposes of this section:

(1) The air transport of an animal includes the entire period during which an animal is in the custody of an air carrier, from check-in of the animal prior to departure until the animal is returned to the owner or guardian of the animal at the final destination of the animal; and

(2) Animal means any warm or cold blooded animal which, at the time of transportation, is being kept as a pet in a family household in the United States, or is being transported for the purpose of being sold as a pet in a family household in the United States.

Issued in Washington, DC, on September 17, 2002.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 02–24127 Filed 9–26–02; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Friday,
September 27, 2002

Part IV

Department of Housing and Urban Development

Final Environmental Impact Statement: City of Hartford, CT; Section 108 Loan Guarantee/BEDI Grant; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4491–N–08]

Final Environmental Impact Statement: City of Hartford, CT; Section 108 Loan Guarantee/BEDI Grant

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development (HUD) gives this notice to the public that the City of Hartford, CT has completed and makes available to the public for comment the Final Environmental Impact Statement (FEIS) that analyzes the potential impacts of developing approximately 37 acres of land and associated air rights in a publicly and privately funded mixed-use 24 hour a day development site located in its downtown land near the Connecticut River. The proposed construction of a multi-use redevelopment project would include a convention center, hotel, parking facilities, and an entertainment/retail/residential complex located in the vicinity of Columbus Boulevard and the Whitehead Highway, known as Adriaen's Landing (the Project). The Project cost is approximately $ 664 million. The City of Hartford proposes to use HUD Brownfields Economic Development Initiative (BEDI) Grant funds ($2 million) and Section 108 Loan Guarantees ($13 million) in support of certain parts of the Project.

This notice is in accordance with the regulations of the Council on Environmental Quality as described in 40 CFR parts 1500–1508 for implementing the procedural provisions of the National Environmental Policy Act. Interested individuals, agencies, and Federal agencies having jurisdiction by law, special expertise, or other special interest are requested to comment.

DATES: *Comment Due Date:* October 28, 2002.

FOR FURTHER INFORMATION CONTACT: All interested agencies, groups and persons are invited to submit comments on the FEIS directly to Ms. Beatriz Roman, Environmental Review Officer, Office of Grants Management, City of Hartford, 550 Main Street, Hartford, CT 06103; phone number: (860) 522–4888 x6127, Fax: (860) 722–6061, e-mail:*broman@ci.hartford.ct.us.*

The FEIS will be available for public review and comment at the following locations during regular business hours: (1) Department of Environmental Protection, 79 Elm Street, Hartford, CT, telephone (860) 424–4180; (2) The Adriaen's Landing Project Office located at 50 Columbus Boulevard, 4th Floor, Hartford, CT; (3) The Hartford Town Clerk's Offices, 550 Main Street, Hartford, CT; (4) Hartford Public Library branches; (5) The Connecticut State Library, 231 Capitol Avenue, Hartford, CT; (6) Capitol Region Council of Governments, 241 Main Street, Hartford, CT; and (7) HUD State of Connecticut Office, 1 Corporate Center, 19th floor, Hartford, CT.

Notice is also given that the City of Hartford and the Capital City Economic Development Authority (CCEDA) will hold a public hearing on the FEIS on Tuesday, October 1, 2002 at 6:30 p.m. in the auditorium of the Betances School, 42 Charter Oak Avenue, Hartford. If necessary the hearing may be rescheduled to or continued on Wednesday, October 2, 2002 at 6:30 p.m. in the auditorium of the Betances School, 42 Charter Oak Avenue, Hartford. The public may comment on the FEIS at the hearing; in addition, written comments may be submitted at the public hearing or before the hearing to Brendan Fox, CCEDA, 50 Columbus Boulevard, 4th floor, Hartford, CT 06106.

SUPPLEMENTARY INFORMATION: The City of Hartford has received a HUD Brownfields Economic Development Initiative (BEDI) grant and Section 108 loan funds to be used for the Project. These grant and loan funds will be used for eligible activities listed within HUD regulations appropriate to the BEDI or Section 108 funding source, specifically for the proposed Hotel and Retail/Entertainment Components of the Project. The Connecticut Legislature enacted Public Acts 98–179, 99–241, and 00–140 to provide funding for projects in downtown Hartford, including the Project. The Capital City Economic Development Authority (CCEDA) was formed to oversee the development of these projects. The Project is seen as a catalyst for attracting residents and businesses to downtown Hartford and ultimately stimulating the revitalization and growth of Hartford and the region.

Public Act 00–140 requires the Capital City Economic Development Authority (CCEDA) to prepare an Environmental Impact Evaluation (EIE) pursuant to the Connecticut Environmental Policy Act (CEPA) for the Project. The Act also authorizes CCEDA to assist the City of Hartford in preparing and processing an Environmental Impact Statement (EIS) on behalf of any Federal agency under the National Environmental Policy Act (NEPA) for any activities subject to NEPA.

Additionally, the Project will require the acquisition of air rights from the Connecticut Department of Transportation, with concurrence by the Federal Highway Administration. The Federal Highway Administration has accepted Cooperating Agency status in the preparation of the NEPA EIS so that the analysis satisfies its requirements for the issuance of air rights.

While the substantive requirements of the evaluations are similar, CEPA anticipates, but does not require, separate evaluations in the event that an EIS is performed pursuant to federal law. Similarly, NEPA anticipates, but does not require, separate evaluations be performed for state or local environmental evaluation requirements. It provides that any environmental document in compliance with NEPA may be combined with other agency documents to reduce duplication and paperwork.

Consistent with both CEPA and NEPA, CCEDA and the City of Hartford have worked to increase efficiency and reduce duplication of effort and paperwork by cooperating to fulfill their respective EIE and EIS responsibilities through release of a single draft document. In fulfillment of its statutory requirements under CEPA, CCEDA has worked to prepare a draft EIE/EIS for the Project, while concurrently assisting the City in ensuring that the combined EIE/EIS document fulfills NEPA requirements. While the NEPA and CEPA processes were running concurrently to an extent, the state EIE process has been completed prior to the federal EIS process, based in part on the separate timeframes imposed by the respective statutes.

Independently justified activities covered by the state EIE which do not limit or prejudice the choice of reasonable alternatives for the federal activities (including issuance of air rights over the Grove Street ramps) were initiated upon completion of the EIE process set forth in Public Act 00–140. Federal elements of the overall Project will not be initiated until after the EIS process is completed.

The original notice of intent to issue the Draft EIS (DEIS) was published in the **Federal Register** on April 1, 1999 (64 FR 15778) and a notice of availability of the DEIS was published in the **Federal Register** on February 13, 2001 (66 FR 10034). After the publication of the DEIS, the Residential/Entertainment/Retail Component of the Recommended Alternative as defined in the DEIS was revisited. This

Component, to be built in phases, was revised and currently consists of approximately 248,840 SF of retail space, including specialty shops, restaurants, cafes, nightclubs, cinemas, and other entertainment venues; 200 to 267 units of residential rental units; and 1,384-car parking garage in Phase I. The Entertainment/Retail Phase I Component is now being referred to as Meeting House Square. The amount of Entertainment/Retail space remains roughly the same as under the DEIS scenario. Likewise, the number of parking spaces associated with the parking garages is similar. The elimination of the Office Space from the DEIS scenario will revise the result of the Secondary Impact Analysis presented in the Final EIS.

The Final EIS covers the following subjects: traffic and parking impacts, land uses, socioeconomics, historic and archeological resources, air quality, noise, visual and aesthetic character, terrestrial ecology, wildlife, fisheries, water resources (including water quality, stormwater runoff, wells, and aquifers), floodplains, wetlands, water body modifications, environmental site assessment, threatened and endangered species, considerations relating to pedestrians and bicyclists, construction and engineering considerations, utilities, energy consumption, secondary and cumulative impacts. The Final EIS discusses alternatives and the proposed mitigation measures to address environmental impacts of the Project.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: September 23, 2002.

Donna M. Abbenante,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 02–24618 Filed 9–26–02; 8:45 am]

BILLING CODE 4491–08–P

Federal Register

Friday,
September 27, 2002

Part V

Department of Housing and Urban Development

Notice of FHA Debenture Call; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4463–N–12]

Notice of FHA Debenture Call

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces a debenture recall of certain Federal Housing Administration (FHA) debentures, in accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Richard Keyser, Room 3119P, L'Enfant Plaza, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–7510, extension 137. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Pursuant to Sections 204(c) and 207(j) of the National Housing Act, 12 U.S.C. 1710(c), 1713(j), and in accordance with HUD's regulation at 24 CFR 203.409 and 207.259(e)(3), the Assistant Secretary for Housing-Federal Housing Commissioner, with the approval of the Secretary of the Treasury, announces the call of all FHA debentures, with a coupon rate of 6.25 percent or above, except for those debentures subject to ''debenture lock agreements'', that have been registered on the books of the Bureau of Public Debt, Department of the Treasury, and are, therefore, ''outstanding'' as of September 30, 2002. The date of the call is January 1, 2003.

The debentures will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of the call date. Final interest on any called debentures will be paid with the principal at redemption.

During the period from the date of this Notice to the call date, debentures that are subject to the call may not be used by the mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer of debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after November 15, 2002. This does not affect the right of the holder of a debenture to sell or assign the debenture on or after this date. Payment of final principal and interest due on January 1, 2003, will be made automatically to the registered holder.

Dated: September 23, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–24617 Filed 9–26–02; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Friday,
September 27, 2002

Part VI

Department of State

Culturally Significant Object Imported for Exhibition Determinations: "Nomadic Art of Eastern Eurasian Steppes" and "Virtue and Violence: Portrayals of Lucretia and Achilles by Giuseppe Cades"; Notice

DEPARTMENT OF STATE

[Public Notice 4144]

Culturally Significant Object Imported for Exhibition Determinations: ''Nomadic Art of the Eastern Eurasian Steppes''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Nomadic Art of the Eastern Eurasian Steppes,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, from on or about September 30, 2002 to on or about January 5, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Orde F. Kittrie, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–5078). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 24, 2002.

Patricia Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–24743 Filed 9–26–02; 1:16 pm]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4145]

Culturally Significant Object Imported for Exhibition Determinations: ''Virtue and Violence: Portrayals of Lucretia and Achilles by Giuseppe Cades''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Virtue and Violence: Portrayals of Lucretia and Achilles by Giuseppe Cades,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Toledo Museum of Art, from on or about October 4, 2002 to on or about January 5, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Orde F. Kittrie, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–5078). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 24, 2002.

Patricia Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–24744 Filed 9–26–02; 1:16 pm]

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H.R. 3287/P.L. 107–225

To redesignate the facility of the United States Postal Service located at 900 Brentwood Road, NE, in Washington, D.C., as the ''Joseph Curseen, Jr. and Thomas Morris, Jr. Processing and Distribution Center''. (Sept. 24, 2002; 116 Stat. 1344)

H.R. 3917/P.L. 107–226

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H.R. 5207/P.L. 107–227

To designate the facility of the United States Postal Service located at 6101 West Old Shakopee Road in Bloomington, Minnesota, as the ''Thomas E. Burnett, Jr. Post Office Building''. (Sept. 24, 2002; 116 Stat. 1349)

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